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New Hampshire

T.P.C.





W. Hampshire. Courts: Superior
NORTHERN RAILROAD

Court.

CONCORD RAILROAD.

S. J. COURT. MERRIMACK COUNTY,

JUNE TERM, 1870. IN CHANCERY.

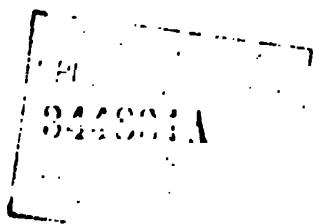
EVIDENCE ON THE PART OF COMPLAINANTS.

CONCORD:

PRINTED BY McFARLAND & JENKS.

1870.

1. Railways - U.S. - United States
Railway - N.Y.C.
2. Railways - U.S. - United States
Coastal - Railroad - Union
3. Railways - United States



EVIDENCE.

I, James W. Johnson, of Enfield, in the County of Grafton, and State of New-Hampshire, testify and say as follows, in answer to the following interrogatories:

Q. 1. (*By John Y. Mugridge, counsel for the plaintiffs.*) Are you a director and stockholder of the Concord Railroad Corporation? If so, how much stock do you own, when did you purchase it, and when were you elected such director?

A. I am a director and stockholder of said Corporation. I think I own about three hundred shares. About the 20th day of May I purchased the stock. I was elected director, I think, the 24th day of May.

Q. 2. What is your business, and how long have you been engaged in it?

A. I am a produce dealer, I believe they style me,—wool and produce. I have been engaged in it from eighteen to twenty years.

Q. 3. Will you state, as nearly as you can, the extent and amount of said business as done by you, and the sum of money you pay as freight over the Concord Railroad in carrying on such business?

(Objected to as immaterial and otherwise incompetent.)

A. My business directly with the Concord Road is very small; with the through line large, pretty large. I pay for carrying freight over the Concord Road, but don't pay it directly to the Concord Road. That is the best answer I can give.

Mr. Marshall, counsel for the defendants, said at this point, "Hold on; that's enough."

Q. 4. Will you state the amount paid by you to the through line each year, as near as you can state?

A. It varies very much, from fifteen to forty thousand dollars a year; sometimes more, sometimes less; it might be more, it might be less.

Q. 5. Have you not paid them some years more than fifty thousand dollars? and have you not paid them some months as high as fifteen thousand dollars?

(Objected to as leading and otherwise.)

A. I think not, sir.

Q. 6. Have you not paid them as high as fifty thousand dollars any year?

(Question objected to, as before.)

A. I think not, sir.

Q. 7. Have you ever stated any where that you have paid them that sum?

(Question objected to as leading, and upon the further ground that it has been answered twice, apparently, as well as the witness had the means of answering it.)

A. I have no recollection of it. I might have stated that some years my business might have been about fifty thousand dollars a year.

Q. 8. How much of the Concord Railroad stock did you purchase during the eight months preceding the annual election in May, 1870?

A. About five thousand shares for other parties.

Q. 9. Where was said stock principally purchased by you?

A. In Boston.

Q. 10. What brokers in Boston, if any, assisted you in making any of said purchases?

A. Henshaw & Brother, Spencer, Vila & Co., Tower, Giddings & Torrey. That is all I think of.

Q. 11. Is Mr. Tower, of the firm of Tower, Giddings & Torrey, William A. Tower, one of the present directors of the Concord Road?

A. He is.

Q. 12. Give the names of all the persons for whom you purchased said five thousand shares of stock, and the number of shares that each man took out of said five thousand?

A. John H. Pearson, Anson S. Marshall, Frederick Smyth, Moody Currier, Edson Hill, Jo. B. Clark (I think his name is), Natt Head; and there are other men from Manchester, I do n't recollect their names; John A. Spalding (I believe his name is John A.), that is about all I think of; there may be a few other persons. I bought some for my wife, Susan A. Johnson; I have n't spoken of that, I believe. I can't tell exactly the number of shares each man took out of the five thousand; I can give something near, but not exactly. About 1200 for John H. Pearson, I think. I just think of John Kimball; I bought some stock for him. Mr. Marshall had

JOHN W. MARSHALL

between 100 and 200 shares, I can't tell which,—about 200, I think; Mr. Kimball 100; Frederick Smyth about 1000; Edson Hill 500 or 600; Natt Head about 100; Jo. B. Clark about 200; Moody Currier 500 or 600; Spaldings, I can't tell, 300 or 400,—I should think about 300,—that is John A. I did the business with him. I might have done some business with William R. Spalding. My wife had 250; James R. Hill about 250. That is about all I think of.

Q. 13. Did or not each of these persons mentioned in your last answer make personal application to you to purchase said stock for them before the same was purchased?

(Question objected to as immaterial, and otherwise.)

A. Most of them did.

Q. 14. Who of them did not make such application before the purchase of said stock? Give their names.

(Objected to, as before.)

A. John Kimball did n't give his order to me; he gave it to Mr. Marshall or Mr. Pearson, or some one; I can't tell how. Two or three men at Manchester. Mr. Clark's order did n't come directly to me; it came through Governor Smyth, or some one, to me. That's all I think of, but what gave me their orders. I can't tell whether General Head gave his order directly to me or not. Yes, he did; he told me to buy him some stock, before I bought it.

Q. 15. With the exception of the persons named in the last answer, state whether all the persons for whom you bought stock, personally requested you to do it, before you made the purchase?

(Objected to because it has been answered by the witness, and as immaterial.)

A. I think they did.

Q. 16. What was the lowest price per share paid by you for any of the stock you purchased? and what the highest price?

(Objected to as immaterial.)

A. I think I bought some stock for \$75; and I paid as high as \$90 for a very little.

Q. 17. What was the average price per share paid for said stock purchased by you?

(Objected to as before.)

A. Between \$84 and \$85.

Q. 18. State whether or not, so far as you know, parties for whom you purchased said stock, as heretofore designated, or any of them, purchased any shares of said stock from other parties, than that purchased through yourself.

(Objected to as before.)

A. I think they did a little.

Q. 19. When did these parties, or any of them, first engage you to purchase stock as before stated? When was the first application made to you, and by whom was it made?

A. I think Mr. Pearson asked me to buy him some stock, the first of any. I think that was in January. I didn't buy any stock till in February, I think; I might have bought a little the last of January.

Q. 20. Did he tell you at that time how much stock to purchase for him? if so, how much?

A. I think he said that he was going to have some money to invest soon. I think 500 shares; 300, 400 or 500 shares he told me to buy for him first, or any amount not exceeding 500 shares. I know he said it was a safe, sound investment.

Q. 21. Did he subsequently give you an order for more stock as an investment, such as the first order? if so, how long after the first order was given, and what amount did he then order you to purchase for him?

(Objected to as immaterial, and otherwise.)

A. He did; it might have been two or three weeks after the first order, perhaps not as long. He then said he would make it up a thousand; he wanted to make up a thousand shares.

Q. 22. When did you transfer said 1000 shares to John H. Pearson, which he ordered of you, as you have stated, for an investment?

(Objected to as before.)

A. I didn't do it all at once, sir; in March, I think. I did not transfer at all. I bought the stock, took the certificates and delivered them over to the parties in blank.

Q. 23. Did you pay for the stock, the 5000 shares, at the time you purchased it?

A. I did, or near that time.

Q. 24. Have you copies of the accounts that you settled with the different brokers, through whom you purchased said stock?

(Objected to as immaterial, and otherwise incompetent.)

A. I have some bills, not copies.

Q. 25. Whose have you?

(Objected to as before.)

A. I have Henshaw & Brother's, and Spencer & Vila's.

Q. 26. Will you produce those that you have, that they may be copied, and said copies be annexed to this deposition?

(Objected to on the ground that the subject-matter inquired about is immaterial, and otherwise.)

(Mr. Marshall, counsel for defendant, instructed the witness to decline to produce the papers or accounts now.)

A. I decline, for I can't produce them now.

Q. 27. Will you produce them before this deposition is closed?

(Mr. Marshall, counsel for defendant, instructs the witness to say that he will produce them hereafter, if he can, and allow copies thereof to be annexed to this deposition, if so advised by counsel for defendant.)

A. I will, if instructed by counsel for defendant to do so, if that is a correct answer, all I can.

Q. 28. Will you produce them if Mr. Marshall, counsel for defendant, advises you not to do so, for purposes aforesaid?

(Counsel for defendant instructs the witness to say that he will be advised by counsel as to whether he will or will not produce them.)

A. My answer is what Mr. Marshall has said.

Q. 29. Shall you decline to produce said copies, if Mr. Marshall, your counsel, advises you not? and are you personally willing to produce them?

(Counsel for defendant objects to the question, on the ground that the witness has already answered it properly, as he understands it, and instructs the witness to say that he will produce them and allow copies to be annexed, if so advised by counsel, after counsel has examined the same.)

(Counsel for the plaintiffs deny the right of counsel for defendant to instruct the witness as aforesaid, and request the Commissioner to rule whether or not the question is proper and should be answered by the witness.)

(Counsel for defendant claims the right to instruct the witness as to the production of papers before he has examined the same, and afterward; and the Commissioner has no authority to rule as to how the witness shall answer or shall not; but is to take such answers as he gives, and note such objections as either counsel shall make to questions and answers, and there his duty ends in that regard.)

(See answer in cross-examination, No. 172.)

Q. 30. Did you instruct any of said brokers in Boston to purchase all the stock of the Concord Railroad that was offered at the Brokers' Board, regardless of price, for you?

(Objected to as leading, and otherwise.)

A. No, sir.

Q. 31. Will you swear that you gave no such instructions as that to a broker in Boston, or that in substance?

(Objected to as leading, and otherwise incompetent.)

A. I have no recollection of it.

Q. 32. Did you give instructions to any person, or state to any person, that you and the persons you represented would purchase one share more than one half the capital stock of the road, if you had to pay \$100 per share for it?

(Objected to as before.)

A. I have no recollection of so stating.

Q. 33. Will you swear you never did?

(Objected to as before, and on the ground that it has once been answered.)

A. To the best recollection I have, I will. I might have said (I was thinking what I said to Mr. Cheney one day) that stock might go to \$100 per share if the old Board went into the market to buy, or some thing of that kind, but never gave any orders to pay over \$90 per share for any stock, to my knowledge, and that only in two instances.

Q. 34. Were you one of a number of persons that combined together before the last annual meeting of the stockholders of the Concord Railroad to obtain the control of said road by the purchase of stock?

(Question objected to on the ground that it is leading, and otherwise incompetent.)

A. I never knew of any combination, nor I was n't combined.

Q. 35. Is that all the answer you can make to interrogatory 34?

A. I was one of the number that voted, and was one of the number elected; was one of the number that voted the new ticket for the present Board, and used my influence to have that Board elected.

Q. 36. Were you one of a number of persons that before said last annual meeting agreed together to purchase stock sufficient to control the election of Directors at such meeting?

(Objected to as leading, and on the ground that the question assumes there was an agreement as stated in the question, which does not yet appear, and otherwise.)

A. I agreed to do all I could to change the Directors.

Q. 37. If you had any associates in said agreement, who were they? name them all.

(Objected to as immaterial, and otherwise.)

A. John H. Pearson, Anson S. Marshall, Natt Head, Moody Currier, Edson Hill, Frederick Smyth, Jo. B. Clark, William R. Spalding, Isaac Spalding, E. H. Spalding, J. A. Spalding; that is all I think of, there may be more.

Q. 38. When was this agreement between said individuals, for the purpose aforesaid, first entered into, as nearly as you can state?

A. About the 25th of March, 1870, I think, at the time we were considering a proposition from Governor Stearns to sell the stock at \$85 per share, and to have \$100,000 bonus.

Q. 39. Do you mean to state here that there had been no agreement, or combinations, between you and any other persons to obtain the control of the Concord Railroad before the 25th day of March, 1870?

A. No agreements or combination, except private talk that

we would change the management; no combinations, mere private talk. I think it was the 25th of March—would n't be positive—any way I know it was the time we received the proposition from Governor Stearns, and think it was the 25th.

Q. 40. Had it not been talk between you and your associates before the 25th of March that you would make the attempt to control said road, and had not large quantities of stock been purchased before that time for that purpose?

(Objected to as leading, and otherwise incompetent.)

A. There had been talk, but nothing definite had come of it. Some stock had been bought before that time, I don't know for what purpose. It was not for that purpose, as I know of. I supposed the stock would go for a change; people gave me orders to buy stock; said they were not satisfied with the management of the Concord Road, and were going to see if they could make a change. I have heard the change talked of for two or three years. I did n't know that the stock I bought was going for a change. Folks told me, that I bought stock for, that they were going in for a change in the management of the Concord Road. I knew only what they told me. I did n't know, but might have supposed, that it was going for the new Board.

Q. 41. How many shares of stock had you purchased for yourself and your associates, and how many shares did you hold previous to the 25th day of March, 1870?

(Objected to on the ground that the question has been answered substantially several times, and because it is immaterial, and otherwise incompetent.)

A. I should think I had bought from 3000 to 4000, some where in the neighborhood of 3000, I can't tell exactly. I did not own any myself. I mean the 3000 or 4000 were for other persons; it might have been more or less that I had purchased for different parties; this was held at that time.

Q. 42. Was or not said stock purchased by you and your associates for the purpose of obtaining the control of the annual meeting of the road to be held in May, 1870?

(Objected to because it assumes that the witness was an owner of stock, when he has just said, in answer to the previous interrogatory, that he purchased the stock for others, and has two or three times said that he supposed from what they told him that the stock would be voted for a change, and otherwise.)

A. I do n't know, sir, that it was. I supposed from what parties had told me that it would, but I did n't own any stock, and did n't know that it would.

Q. 43. What parties do you refer to in your last answer?

A. Parties that I bought stock for.

Q. 44. Give their names.

(Objected to on the ground that he has given the names of the parties for whom he has purchased stock once, is immaterial, and otherwise incompetent.)

A. John H. Pearson, Anson S. Marshall, Frederick Smyth, Moody Currier, Edson Hill, William R. Spalding, E. H. Spalding, John A. Spalding—that's all I think of.

Q. 45. Did you not purchase said stock with the understanding, at the time you purchased it, that you were buying it to be used for the control of the Concord Railroad, at its annual meeting in May, 1870?

(Objected to on the ground that the witness has twice answered it before, substantially.)

A. Some of the parties that I bought for might have told me that; I did n't know the fact.

12 h. 23 m. P. M., adjourned to 2 P. M.

Q. 46. State whether you and your associates had frequent meetings after you began to buy stock, at which this matter of obtaining control of the Concord Road was a subject of discussion and consideration between you?

A. No meetings till we began to talk about negotiations with Governor Stearns, unless I might have met two or three. I met the two Mr. Spaldings one day in Boston—there were no meetings—I met them accidentally. I might have met two or three of the associates in Manchester. No appointed meetings, if that is what you mean.

Q. 47. Was there, or not, at some time a paper drawn up which was signed by you and your associates relating to this matter of obtaining the control of the Concord Road?

A. There was a memorandum agreement made on the 25th of March, 1870, or thereabout.

Q. 48. Who drew said paper, where was it drawn, where did you last see it, and where is it now, so far as you know?

A. I do n't know nor never knew who drew the paper; I do n't know where it was drawn, I last saw it in Frederick Smyth's bank, in Manchester. I do n't know where it now is.

Q. 49. Did you hear said paper read? State whether or not you signed it, and who, if any body, beside yourself? if so, who, and where you signed it?

A. I heard said paper read—I signed it. I think Mr. Pearson, Mr. Wm. R. Spalding (I won't be positive whether Wm. R. Spalding signed or not), Frederick Smyth, I think; Moody Currier, Edson Hill, Mr. Marshall, I think, signed it, and think that is all; there might have been more.

Q. 50. Did George Clough sign it? and was George Clough one of your associates in matters pertaining to the control of the road, as aforesaid?

A. I can't say whether George Clough signed it; he was

not one of the associates, as I understood; that is, I did n't buy any stock for him. He owned stock.

Q. 51. Will you swear distinctly upon the proposition as to whether George Clough was an associate with yourself, John H. Pearson, Anson S. Marshall, Frederick Smyth, and others, to obtain control of the Concord Road at the annual meeting in May, 1870?

A. No associate, any further than that I understood he owned a large amount of stock, and would vote for a new Board of Directors. Never bought any stock for him, that I remember.

Q. 52. Did he attend any of the meetings of the associates held before the election?

A. I think he was present once or twice.

Q. 53. Will you state fully and particularly the contents of the paper drawn up, as you think, on the 25th of March, 1870, and signed by yourself and associates?

A. The contents were merely that we would n't entertain any more propositions for the sale of our stock to Governor Stearns, or any one else, I think; I would n't be positive whether "any one else" was in or not; and that we were to go ahead and buy what stock we could, to carry the next election. Those were the main points, that we would not sell out our stock without the consent of two thirds. I can't tell whether it was 5 out of 7, or 7 out of 9; it was about two thirds of the signers of the paper. There might have been more in the paper; but this is all I remember. I never heard it read but once. Think there were some names mentioned in the paper; whom they should vote for, for new Board of Directors. That is all that remains in my mind now, of the contents of the paper.

Q. 54. Was it stated in the paper, as to the number of shares that you would make the stock up to, if it were necessary, in order to carry the election? if so, how many?

A. I can't say whether it was stated so or not in the paper; it might have been. I know it was talked by some that they would make it up to 15,001 shares, if necessary; but whether it was in the paper, I can't say. It might have been in the paper and might not. I either heard it read from the paper, or heard some one say so.

Q. 55. Have you made a statement like this any where: "It was in the paper that they would make the stock up to 15001 shares, one share more than half"?

A. I can not say whether I have or not. I may have said some of the associates would buy enough to make one share more than half the road, if necessary.

Q. 56. Was it stated and agreed in the paper that no one

of the signers or associates would sell his stock, without a majority of six or seven agreed to it?

A. I should say the paper said five or seven; it might have been six, my best recollection would be five or seven.

Q. 57. Was there any thing in said paper about the conductor suits, then pending, against George Clough and others?

A. I do n't remember whether there was or not.

Q. 58. Has this question ever been asked you: "Was there any thing in it about the conductor suits?" and was your answer to it, "Yes, sir, that was talked of. I think there was something in it about the conductor suits?"

A. There might have been something in it about conductor suits. (I had a document which Mason W. Tappan handed me, when I was negotiating with Governor Stearns, telling what they would do with the conductor suits if the trade was made with Governor Stearns.) [Parts of answer in parenthesis objected to by counsel for plaintiffs, as not responsive to the question.] I might have got the papers mixed, and could not tell which paper it was in, both papers being read that night.

Q. 59. Who were the persons named in said paper who were designated as the Board of Directors that you were to support?

A. John H. Pearson, Frederick Smyth, Edson Hill, William R. Spalding, Isaac Spalding—I should have named first, perhaps, it makes no material difference. Myself was named, but I had not decided whether I should be a director or not,—whether I would take it.

Q. 60. Did you, in said paper, pledge yourself to use your stock and efforts to secure the election of said persons as such Directors at the next annual meeting?

A. We agreed to use our influence in the purchase of stock to support a new board. I had n't decided whether I should be a director or not at that time.

Q. 61. With the exception as to yourself, did you pledge yourselves in that paper to support, with your stock and influence, the persons you named in your answer to interrogatory 59, as a Board of Directors for the Concord Railroad?

(Objected to as answered once.)

A. There was no pledge any further than an agreement, as I understood.

Q. 61. How much, in dollars and cents, did the stock which you purchased for yourself and others amount to, as near as you can state?

A. A little over \$400,000, I think.

Q. 63. For what purpose did you and your associates buy

said stock and seek the control of the Concord Road in the manner you have stated?

A. The most of them told me for an investment; all of them told me it was a safe, sound and good investment.

Q. 64. For what purpose did you buy the stock which you owned and voted on at the annual meeting, and that which you bought for your wife, as aforesaid?

(Objected to on the ground that it is of no consequence for what purpose he individually bought his stock, and on the ground that it is immaterial, as there is no allegation in the bill that he had no right to buy stock, and as otherwise incompetent.)

A. The main purpose was that it was a good investment; another purpose was that I had made my mind up that I would like to be a director in the Concord Road.

Q. 65. Did you purchase this stock to enable you to obtain said position as such director?

A. I purchased it because I thought it was a good investment, and because I wanted to be a director in the Concord Railroad.

Q. 66. So far as you knew, what was the motive or inducement upon the part of your associates in making the purchases of stock they did through you and elsewhere?

A. They said it was a good, sound and safe investment; and they thought the road could be managed better than it was; that the road should have better cars and better accommodations generally.

Q. 67. Was it any part of their purpose, as you understood it, in buying said stock, to get themselves elected Directors of the Concord Road?

A. I don't know that it was, but presume it was; never heard any one say he was going to elect himself, in the world.

Q. 68. Do you think that your associates went into this operation of purchasing stock purely upon the idea that they were going to make a good, safe and sound investment of their money?

(Objected to as clearly incompetent and immaterial.)

A. I think that was the strongest reason, for they all told me it was a safe, sound and good investment.

Q. 69. If they had any other reasons, so far as you know, what were they?

A. That was the main reason, as I understood. I knew of no other reason, but supposed that they might have wanted a new board. This was about the 25th; I knew of no other reason up to about that time.

Q. 70. Did you know of any other reason, after the 25th and before the time of the election, other than a desire to ob-

tain a safe, sound and good investment for their funds? If so, what was it?

A. No other, unless a new board of directors.

Q. 71. What do you mean when you say no other except a new board of directors?

A. I mean the investment to be a good investment, and some might want to be directors.

Q. 72. Who were those who bought stock, wanting to be directors, as you say?

A. Do n't know as I ever heard a man say he wanted to be director.

Q. 73. So far as you know, was it any purpose upon the part of any of your associates to make themselves directors at the annual meeting? Did you ever know, hear or mistrust of any such thing before the annual meeting?

(Objected to because it not only asks for hearsay, but for suspicion entertained by the witness as to the desire of others, and as otherwise entirely immaterial.)

A. O, yes.

Q. 74. So far as you know from him, what were all the motives which induced John H. Pearson to buy 1200 shares of the Concord Railroad stock?

A. I know of no other motive than of good investment, as he always told me. I supposed he would like to be a director, though he never told me so.

Q. 75. Did he ever state to you, or intimate to you, from the time you purchased stock for him up to the time of the annual meeting, that he wanted to be a director in the Concord Railroad?

(Objected to on the ground that Mr. Pearson is the best witness as to what his purposes were in buying stock, if the fact can by any possibility become material, and that the question is entirely incompetent.)

A. I do n't remember as he did; he might have said that he would like to run and help manage the Concord Railroad in a little different way from what it was then. I had the impression that he would like to be a director, although I do n't know that he ever told me so.

Q. 76. So far as you know from Moody Currier, what were all the motives which induced him to make this purchase of stock?

(Objected to on the ground that it is entirely incompetent and immaterial.)

A. I know of no other motive except for a good safe investment, unless he supposed he was going to be made treasurer; it was talked of that he would make a good treasurer.

Q. 77. Did you ever hear him say, or did you ever under-

stand from him, that his purpose in buying stock was to become Treasurer of the Concord Railroad?

A. No, sir.

Q. 78. So far as you know from him, what were the reasons that induced Anson S. Marshall to buy his stock in the Concord Railroad, that you have before alluded to?

A. I don't know, sir, as he never told me; and I never talked to him about his reasons, at all.

Q. 79. Did you not understand that he bought it for an investment, like Mr. Carrier, Mr. Pearson, your wife and yourself?

(Objected to on the ground that it is entirely incompetent, and the witness could have no understanding, as he said he never talked with him about it, and of course can only guess as to his purposes.)

A. I had no understanding about it, as I never talked with him about it. I had bought but little stock for him, and had no talk with him about it.

Q. 80. From what you heard from him, did you have any idea or understanding that his expectation of being clerk of the new board of directors had any thing to do with his buying of stock?

(Objected to as immaterial and incompetent.)

A. No, sir.

Q. 81. Did you not understand that Frederick Smyth purchased his 1000 or 1200 shares purely upon the ground that it was a good, safe and sound investment; and do you think from what he ever said to you, that the idea of his being in the Board of Directors, and at some time President of the road, had any thing to do with his making said purchases?

(Objected to on the ground that it is immaterial, and that his understanding as to Mr. Smyth's purposes is clearly incompetent.)

A. He always said it was a safe and sound investment, and would pay six per cent on what it cost, free and clear from taxation. I do n't know whether the idea of his being in the Board, &c., had any thing to do with his making said purchases.

Q. 82. Now do you not know that Governor Smyth, Carrier, Marshall and Pearson, borrowed every dollar of the money with which they purchased stock, as you say for an investment, at a rate of interest as great as they would receive from the dividends on the stock?

A. No, sir; I do n't know that they borrowed it. I know that some of them borrowed funds.

Q. 83. Do you not know, from his own lips, that Moody Carrier bought \$51,000,—being the whole sum he paid for his stock,—at six per cent?

A. No, sir; he never told me so, and I never heard him say so.

Q. 84. Do you mean to swear that you never heard him say so, and never knew that fact to be true?

(Objected to as immaterial, and otherwise incompetent.)

A. I do to the best of my recollection.

Q. 85. You say that you know that some of the persons indicated in previous answers borrowed money, who did you refer to?

(Objected to as immaterial, and otherwise.)

A. To Governor Smyth. I am not knowing to the fact that any others borrowed money that I think of; still they might all have borrowed money without my knowing it; I mean for Concord Railroad stock.

Q. 86. How much did Governor Smyth borrow?

A. I think between \$60,000 and \$70,000 that I knew about.

Q. 87. Where did he (Smyth) borrow this \$60,000 or \$70,000, which you know about?

(Objected to as immaterial, and otherwise.)

A. \$25,500 at the National Savings Bank of Concord. He told me one day that he wanted to borrow some money. I told him I could get some for him at Concord. I made the proposition for a loan at the National Savings Bank, I think for \$25,500. The Bank voted to make the loan. Governor Smyth told me he would get John H. Pearson and Anson S. Marshall to sign the note with him, and asked me if I would sign it with him: I said I would. He said he would leave collateral of Concord Railroad stock if the Bank wanted any collateral. The Bank made the loan. Then he said he wanted some more money. He said his Bank had some money, but he did n't want to borrow it from his own bank, asked me if I would sign a note to his bank if he would put collateral into my hands and I could put collateral into the bank. I told him I would do so, and did sign two notes, one for \$20,000, one for \$22,500—one to each bank, \$20,000 to the Merrimack River Savings Bank, \$22,500 to the First National Bank of Manchester. He put collateral into my hands, 500 shares of Concord Railroad stock; \$4000 or \$5000 or \$6000 of U. P. Bonds; shares of Manchester & Lawrence Railroad, I forget the number; and some Concord & Portsmouth Railroad shares, I think; I won't be certain; and some other stock—some Union Pacific, I think; enough so that I was satisfied to sign the notes to the banks.

Q. 88. Was this sixty or seventy thousand dollars used to purchase Concord Railroad stock?

A. I suppose it was, but don't know certain.

Q. 89. Was the note that you speak of for \$25,000, given to the National Savings Bank in Concord, dated March 15, 1870?

and was it signed by Frederick Smyth, John H. Pearson, J. W. Johnson, and A. S. Marshall?

A. I presume that was the date; it was signed by those men; I do n't know about the date.

Q. 90. Did each of said signers leave with said bank 75 shares of Concord Railroad stock as collateral? and if so, when was it left with reference to the date of the note, before or after?

A. No, sir; Governor Smyth left 300 shares as collateral; in May Governor Smyth wanted Mr. Pearson, Mr. Marshall and myself, to take 75 shares each of that stock and pay a portion of the note, I think it was from the 1st to the 10th of May; that stock was divided up into four certificates, 75 to Governor Smyth, 75 to Mr. Marshall, 75 to John H. Pearson, and 75 to my wife; on the 21st of May my wife transferred her 75 to me, and I voted upon them at the meeting. The Board of Directors said they did n't want any collateral, the note was good without any collateral. That note remains now in the bank, I suppose. The other two notes that I signed to his bank have been paid.

Q. 91. Is there any collateral held by the bank at the present time for said note?

A. Yes, sir, 300 shares, 75 by each person signed in blank.

Q. 92. Has there been any formal transfer of said stock to the bank as collateral security, or is it simply held by them indorsed in blank.

(Objected to on the ground that the witness has already stated that the bank holds it as collateral, as he understands it, and has also stated that the only transfer is in blank; and the question as to whether that is a legal transfer, is a question of law and not of fact.)

A. It was indorsed in blank and left there; whether they have got it transferred, I do n't know.

Q. 93. How many of the trustees of the National Savings Bank of Concord are the signers of said note? give their names?

A. Myself. I think Mr. Marshall is. That is all I know of. Perhaps Mr. Pearson is, I don't know. I don't know but Governor Smyth is, though I never knew it.

Q. 94. Is not John H. Pearson a trustee? and has he not been from the organization of the bank? and what is the rate per cent of said loan, and have you paid any of the interest on said loan since the note was given?

(Objected to so far as that portion of the question is concerned which relates to the rate of interest. It can not be presumed that the bank took any more than the legal rate of interest.)

A. If Mr. Pearson is a trustee, I never knew of it. I never met him at any meetings of the Bank. I do n't know but he is. I suppose the rate per cent of said loan was the legal rate per cent. I do n't remember any thing said about interest, though there might have been. Governor Smyth told me he had paid in advance \$600 or \$700, I think, but I wont state the amount.

Q. 95. Did you procure a loan from said Savings Bank on the 15th day of March, 1870, of \$15,000, and if so, upon what paper and what security therefor to the Bank?

A. I presume I did. I do n't know as it was upon that day. I borrow a good deal of money in the course of the year, upon business paper. Think I had some paper discounted in March. Some of it was Simmons, Amsden & Co's paper, and part of it O. A. Bingham & Co's. I have their business paper very often, and get it discounted at different banks.

Q. 96. Did you not get discounted at the National Savings Bank, at Concord, paper of Simmons, Amsden & Co. to the amount of \$10,000, on the 8th day of March, 1870, seven days before the loan of \$25,500?

(Objected to on the ground that it does 'nt appear that Simmons, Amsden & Co's paper had any thing to do with the purchase of Concord Railroad stock, and the same is entirely immaterial.)

A. I can't tell whether it was from the Savings Bank or the National Bank. I get paper discounted very often, and do n't always know which bank it is discounted at, sometimes the National Bank and sometimes the Savings Bank. (I take Simmons, Amsden & Co's paper and O. A. Bingham & Co's for wool and produce as high as \$100,000 a year, some years.)

(The portion in parentheses objected to as not responsive to the question.)

Q. 97. Have the Savings Bank a particle of security for such \$10,000, save your indorsement? if so, what is it?

(Objected to as immaterial, and because it does n't appear that it is in the National Savings Bank, as yet, which the question assumes is there for \$10,000.)

A. Simmons, Amsden & Co., of Boston. The note has been paid long ago. It was a time note. I do n't take any thing but time notes. There were three notes of \$5,000. Each that had run partly off, partly matured. They were discounted in March. There was no security, regular business paper—the notes have been paid, run off long ago.

Q. 98. How much money did the stock, which you bought for your wife, and upon which she voted, cost?

A. About \$20,000. She had 250 shares.

Q. 99. Where did you get the money with which you paid for the \$20,000 worth of stock which you bought and

gave her, and which you bought, you say, as a good and safe investment for her?

A. She borrowed \$15,000 of Mr. Richardson, of Boston (Augustus Richardson). She had some money of her own, and some Hartford & Erie stock, which she sold and made the balance.

Q. 100. On whose note was the money obtained from Mr. Richardson, of Boston, the \$15,000?

A. Upon her note. I signed the note as surety.

Q. 101. Had Mr. Richardson any other security than your signature to the note as surety?

A. He had the 250 shares of Concord Railroad stock transferred as collateral.

Q. 102. Has any thing been paid by her, or you, on that note to Richardson, since it was given?

A. No, sir; he is in Europe, and has been in Europe ever since the loan has been made.

Q. 103. How much stock did you vote on and own at the last annual meeting, and what did it cost you?

A. I think about three hundred shares, a little over or little less; I can't tell now which. I think it cost me about \$83 a share.

Q. 104. Where did you get money to buy this \$25,000 worth of stock, which you bought mainly as a good, sound, safe investment?

A. I had it on deposit at the time, and enough to buy \$25,000 worth more at the time I bought it, or about it.

Q. 105. When did you buy it?

A. About the 20th of May, or some where in that vicinity.

Q. 106. Where did you have \$50,000 on deposit about the 20th of May, 1870?

A. Tower, Giddings & Torrey, 74 State Street, Boston.

Q. 107. Was any of that money that you had so on deposit obtained by loans procured from savings banks?

(Objected to upon the ground that it is ambiguous; as it don't ask whether the loans were made by him or others, if any was obtained from loan, and as immaterial, and otherwise incompetent.)

A. Not that I know of.

Q. 108. Will you swear, sir, here, that it was not?

(Objected to as immaterial.)

A. To the best of my recollection, I will. Not a dollar of it, that I knew of, except the loan procured way back in March may have been a part of it, and it might have been spent a half dozen times. The money was all mine.

Q. 109. Will you state fully where you obtained the \$40,000 with which to pay for the Concord Railroad stock which you bought?

A. I got it from the folks that had the stock. They paid me for the stock when they took it, and some times before they took it.

Q. 110. Did you hold all the stock, or substantially all you had bought before that time, on the 25th day of March, 1870?

A. No, sir.

Q. 111. Will you state how much money you owe directly, and how much you are liable for as indorser, or surety, which money was used to buy Concord Railroad stock with, prior to the last annual election?

(Objected to on the ground that the question is immaterial and incompetent, and for the further reason that it is of no consequence to the question on trial how much money he owes, to whom he owes it, except so far as relates to savings banks and his indebtedness to them, if that can be competent.)

A. I can't tell how much I owe now, or how much I owed then. I could tell if I was at home. I was holden as indorser on \$68,000 to savings banks at the time of the election; since then \$42,500 has been paid, leaving \$25,500 that I am holden on now at the National Savings Bank at Concord. I was mistaken; it should have been \$45,500, instead of \$68,000, to Savings Bank; since then \$20,000 has been paid, leaving \$25,500 unpaid.

Q. 112. To what savings banks were you indebted at the time of the election in May last, in the sum of \$45,500?

A. To the National Savings Bank, Concord, \$25,500; \$20,000 to the Merrimack Savings Bank, Manchester.

Q. 113. Have you ever obtained, or aided in obtaining, any money from any savings bank in Nashua, to purchase stock of the Concord Railroad with?

A. No, not a dollar.

Adjourned at 6 P. M., to 7 o'clock P. M.

Q. 114. You have said that some time in May last you had about \$50,000 on deposit. How much money were you owing at that time?

(Objected to as immaterial and otherwise.)

A. I can't tell you exactly.

Q. 115. State as nearly as you can?

(Objected to as before.)

A. I told you all, previous, that I owed to any savings bank, to the best of my recollection.

Q. 116. State your entire indebtedness in May, 1870, to savings bank, and to every body else, as near as you can?

(Objected to as before.)

A. I can't tell you.

Q. 117. Have you no sort of an idea what your entire indebtedness and the whole amount of your liabilities in May,

1870, were, so that you can give an approximate statement of the same?

(Objected to as before.)

A. I can't. I think I owed nothing in New-Hampshire, except what I have told you of.

Q. 118. Was not the entire amount of your indebtedness and liabilities in May, 1870, more than \$75,000.

(Objected to as before.)

A. I can't say.

Q. 119. Will you state that such liability and indebtedness was not \$100,000?

(Objected to as before.)

A. I should think not, from the best of my recollection.

Q. 120. Will you swear here positively, that you did not owe and was not liable for \$150,000, in May, 1870.

(Objected to as before.)

A. I can't tell. I sometimes sign bonds for people, and I should not want to swear how that was.

Q. 121. Did you not owe directly on your own individual liability, over \$100,000 in May, 1870?

(Objected to as before.)

A. I can't tell whether I did or did not. I don't know what you mean by individual liability.

Q. 122. Will you swear that there were not notes and other personal liabilities of your own, to the amount of over \$100,000, outstanding against you in May, 1870?

(Objected to as before.)

A. I will swear that I did n't owe that privately. I might have signed notes and bonds for other persons that might make me liable.

Q. 123. Leave the question of bonds entirely out of account; will you swear that you did not owe on notes of your own, \$100,000, in May, 1870.

(Objected to as immaterial, and ambiguous in this respect, as it do n't appear in the question as to whether the inquiry is how much he owes on his own private account, or whether the amount that he owed as guarantor or indorser for others.)

A. I can not say.

Q. 124. Will you swear, leaving the question of bonds entirely out of the account, that you did not owe, on your own private account, \$125,000, in May, 1870?

(Objected to as immaterial and otherwise.)

A. I can not state. I had a big pile of wool on hand at that time.

Q. 125. Do you not owe to-day, \$150,000, on your own private indebtedness?

(Objected to as before.)

A. I should presume I did.

Q. 126. Have you within a fortnight of this time made application by yourself, or any person acting in your behalf, for a loan of \$20,000 or \$30,000?

(Objected to as immaterial.)

A. No, sir.

Q. 127. Have you made an application for any loans of any amount within a fortnight?

(Objected to as before.)

A. Yes, sir.

Q. 128. To whom have you applied?

(Objected to as before.)

A. To the First National Bank of Concord for \$10,000.

Q. 129. Have you applied to any party in Boston for a loan beside the loan spoken of?

(Objected to as before.)

A. No, sir.

Q. 130. Have you sent any parties to any other banks in Concord, or private individuals, within three weeks, soliciting loans?

(Objected to, as before.)

A. I asked Mr. Barron, President of the State Capital Bank, if he had any money to loan. (I told him if he had any I should like a couple thousand dollars. He said he was at Boston a few days before, and had taken \$20,000 in paper,—all that the bank could take at present. I told him very well, I could get along just as well without it. I was going west to buy grain, and did n't know whether I should want to use much money or not, but was going to carry \$20,000 or \$30,000 in case I should want to use any. I had already bought 20,000 bushels of oats in Toledo, and about 10,000 bushels of old barley in Canada. I had a good deal of money locked up in wool, and was expecting to use a good deal in the grain trade this fall. Last fall I handled about \$300,000 worth of barley in four months, and I expect to handle that amount this year. It takes considerable money to do my business, and at times I owe a good deal of money, and have a good deal owed me, and never was dunned a second time for money, that I know of. I own to-day one half interest in about one half million pounds of wool.)

(Parts of answer inclosed in parenthesis objected to by plaintiff's counsel as irresponsible to the question.)

Q. 131. What did that wool cost you when you purchased it, and what is the same quality of wool selling for in the market to-day?

(Objected to as incompetent and immaterial.)

A. It cost from 39 to 45 cents per pound, and is selling now for from 45 to 53 cents per pound.

Q. 132. How long have you had that wool on hand?

(Objected to as immaterial, and otherwise.)

A. About 100,000 pounds I bought last January or February; the balance I bought within, say the first of June.

Q. 133. Have you stated to any person, within three months' time, that you were in straitened pecuniary circumstances, and must have money soon; or have you expressed, without using your precise terms, to any person, within three months, a necessity that existed on your part for money?

(Objected to as entirely immaterial, and otherwise.)

A. No, sir, unless it was in fun. I am very positive of that, unless it was for fun. I have not seen the time for ten years when I have been short of money. I never saw the time but I could borrow all I wanted.

On cross examination deponent says as follows, in answer to the following interrogatories:

Q. 134. (*By Anson S. Marshall, counsel for defendant.*) Did you testify before the special committee of the Legislature last June as to all, or substantially all that has been inquired of you now, and was that testimony taken stenographically, or in short hand, as you understand it?

(Objected to by counsel for plaintiff as incompetent.)

A. I testified before the Legislative committee. I testified to the conversation I had with Governor Stearns about the sale of the stock of the Concord Railroad, different points I should think to-day from what I testified to before the Legislative committee—substantially I testified the same. A great many questions have been asked me to-day that were not asked me by the Legislative committee in relation to what I owed outside of savings banks for Concord Railroad stock. I think the testimony was taken stenographically.

Q. 135. When did you decide that you would be a candidate for Director of the Concord Road?

A. Some time in the fore part or middle of May last, I think.

Q. 136. You have stated that you purchased some stock for different persons at their request. State when you went to see Governor Stearns in relation to matters connected with the Concord Railroad, and at whose request you went?

A. I think about the 10th of March last. I went to see Governor Stearns at the request of John E. Lyon, who met me in the Boston Post-Office and said Governor Stearns wanted to see me, and wished me to go and see him at once; I told him I would go and see him as soon as I could attend to it, and did go, I think, that evening.

(Lyon's sayings objected to by counsel for plaintiff as hearsay.)

Q. 137. Had you yourself or any one of the persons for whom you purchased stock, to your knowledge, suggested or

intimated, directly or indirectly, the idea of selling any portion of the stock then owned by these persons to Mr. Stearns or any one else, before this time?

A. No, sir.

Q. 138. Was there any thing said by you to Governor Stearns, at the interview you had with him at the request of Mr. Lyon, as before stated, about selling any portion of the Concord stock which you had purchased for other parties?

A. Not at that time.

Q. 139. Did you have another interview with Governor Stearns in Boston soon after this? if so, at whose request and where did you have it?

A. I did, at the request of A. M. Shaw, at the Old Colony Depot, in Boston.

Q. 140. What did Mr. Shaw say to you at the time he requested you to see Mr. Stearns?

A. He said Governor Stearns wanted to see me very much, and wished me to go right up with him and see him. I told him I could n't go then, but would go up in the afternoon.

(Shaw's sayings objected to, as hearsay.)

Q. 141. Did you go?

A. I did.

Q. 142. Who first suggested to you the idea that the parties for whom you had purchased stock, Mr. Currier, Mr. Smyth, Mr. Pearson and others, could sell their stock to Mr. Stearns, and the price?

A. Gov. Stearns.

Q. 143. How much did he say he would pay them for that stock, and how much bonus in addition?

A. Eighty-five dollars per share and \$100,000 bonus.

Q. 144. Did he tell you this at the interview you had at the request of Mr. Shaw?

A. No, sir.

Q. 145. When did he tell it you?

A. A few days after the interview, at Shaw's request.

Q. 146. How happened you to have this interview at the time he told you what he would pay for the stock, where was it, and about what time was it last March?

A. After seeing Gov. Stearns at Mr. Shaw's request, I made an appointment with him to see him again — this interview with Mr. Shaw (or by Mr. Shaw's request, he was there, but not in the room). Mr. Stearns wanted to know how much stock I had bought, and whom I had bought it for, and asked me if there could be any arrangement made to take part old directors and part new ones. I told him I did not know; but would see what could be done, if any thing; and made an appointment to see him again. I came up on the train with Mr. Shaw. He asked me if there was n't some way that the thing

could be fixed, so that the Northern Road could run and control the Concord Road; said if there was any way it could be done, that I could have any amount of money I asked for. I asked him what he meant by any amount of money — 5, 10, 20, 50, or \$100,000, I asked him. He said \$100,000, and more if I wanted it. I told him that I had agreed to see Governor Stearns again, and after seeing the folks that owned the stock, I would report what could be done, if any thing. This interview with Governor Stearns was about the 20th of March.

(Shaw's sayings objected to as hearsay, by counsel for plaintiff.)

Q. 147. When Mr. Stearns said he would pay the \$85 per share for the stock which you had purchased for other parties, and \$100,000 bonus, did you tell him about how much stock you had purchased for others? if so, about how much?

A. I think I told him from 3500 to 4000 shares.

Q. 148. Did he tell you at that time, or about that time, for what purpose he wanted to purchase the stock of the Concord road, as aforesaid? and did he say he wanted to get control of the Concord Railroad?

A. He said he wanted to make a business contract so that the Northern Road could run and control the Concord Road for ten or fifteen years.

Q. 149. Did he make it a condition that the parties who owned the stock should retain it, in the first instance, and vote for such a contract?

(Objected to on the ground that the witness should be asked what Gov. Stearns said.)

A. He did, at this time.

Q. 150. Why did he say he wanted to make this business contract so that the Northern Road could run and control the Concord Road?

A. He thought it would be a great help and benefit to the Northern Road; said he could pay the Concord stockholders ten per cent, and have a handsome sum left for the benefit of the Northern road.

Q. 151. Did you suggest or name this proposition of Gov. Stearns to Mr. Currier, Mr. Hill, Mr. Pearson, Mr. Wm. R. Spalding and Mr. Marshall, that Mr. Stearns would pay them \$100,000, and \$85 per share for their stock in addition; provided they would retain their stock till after the annual meeting, and vote for the business contract at the annual meeting? if so, what did they say?

(Objected to.)

A. I did. Some of them said they would sell their stock, but would not sell themselves; some said they would sell for greenbacks down, others said they would n't sell at all, nor take a dollar of the \$100,000 bonus.

Q. 152. Before this time, had any one of the persons named in answer to interrogatory 151, intimated or suggested to you that they wanted to sell their stock, or that they expected to sell it to any body?

A. Not that I remember of.

Q. 153. Did you tell Mr. Stearns the result of this interview? and tell him that no one of the persons for whom you purchased stock would consent to sell, and retain it and vote for the business contract such as you have named?

(Objected to as leading.)

A. I did.

Q. 154. State what he said in reply?

A. He wanted to know if there could n't be some arrangement made. I told him that I thought if he would pay all the money down, take the stock and pay the \$100,000 down, I would try again to make the trade go. This, I think, was Saturday morning, about the 26th day of March, 1870. He wanted to know where he could see me Monday morning. I told him I would come to Concord Monday, on the first train. Said he would see me and give me an answer whether the money could be raised. I made arrangements to meet him Monday morning, in Concord. I did meet him at or near Franklin, Monday in the afternoon. He told me he thought he had arrangements made so that he could take all the stock we had to sell at \$85 per share, and pay \$100,000, cash down. I made arrangements to meet him the next day, Tuesday, at the Northern Railroad office, in Boston, to make a final decision whether he could raise the money or not. I did meet him. William R. Spalding was with me. He told me to draw sight draft on him for \$50,000 the next morning, and the balance of \$50,000, for the bonus, he would pay on delivery of the stock; also pay for stock as fast as we brought it along. I think that was the main part of the conversation at the time.

Q. 155. Did he say that, in addition to paying \$85 per share and \$100,000 bonus, he would enter the suit pending against George Clough "neither party"?

(Objected to as leading.)

A. Yes, sir, and all other suits against conductors.

Q. 156. State for whom you were acting, in undertaking to make this sale of the stock to Governor Stearns, and at whose request were you acting?

A. For Governor Stearns — at his request.

Q. 157. Did you name Governor Stearns' proposition: namely, that he would pay \$100,000 bonus, \$85 per share for the stock, and enter the suits against George Clough and other conductors "neither party," to the parties for whom you had purchased stock? if so, what did they say?

A. I did name it to them; some of them were for taking the money, others were against it; the conclusion was not to accept the offer.

Q. 158. You may state whether it is your recollection, or not, that the memorandum of agreement, signed as you have stated, by Messrs. Pearson, Smith and others, was signed at the time when this last proposition of Mr. Stearns was rejected?

A. I think it was.

Q. 159. Did Mr. Tappan report to you on the Friday before the annual meeting of the Concord Railroad, that Mr. Stearns would then pay \$85 per share for the stock, the \$100,000 bonus, and enter the conductor suits "neither party."

A. He did, the week before the annual meeting. I won't say it was Friday; but some time in the week.

Q. 160. Did Mr. Pearson, and others of the parties for whom you purchased the stock, tell you that one of their purposes in buying was to prevent consolidation?

(Objected to as leading, and as incompetent, being the sayings of the parties.)

A. They did, — almost all of them. They were all against consolidation, so far as I knew.

Q. 161. Did Mr. Minot consent to Mr. Stearns making the offer of \$100,000 bonus, or was Mr. Minot present at the time Mr. Stearns told you, in Boston, that he would pay you \$85 per share for the stock which you had purchased for other parties, pay \$100,000 bonus, and enter the conductor suits "neither party"?

A. Mr. Minot was present. I had no talk with Mr. Minot myself. Mr. Minot was not where he could hear Stearns talk with me. He was present, and I saw him in Boston at Mr. Stearns' office both times; but he was not in the room when Mr. Stearns and I were talking. Mr. Stearns told me that Mr. Minot assented to the arrangement. Also Mr. Tappan told me that Mr. Stearns and Mr. Minot had agreed about the conductor cases, to enter them "neither party" without any judgment.

Q. 162. Did Mr. Stearns say that he had the consent of the Directors of the Northern Railroad to purchase this stock for \$85 per share, and \$100,000 bonus, on account of the Northern Railroad?

A. He did — said that he could make them do almost anything that he asked them to.

(Adjourned at 10:15 P. M., to Thursday at 8 A. M.)

Q. 163. Did you make any agreement or arrangement of any kind with an officer or officers of any savings bank, or did any of the persons who were elected directors at the last annual meeting, or who voted for them as such Directors of the

Concord Railroad, at that meeting, to your knowledge, make any agreement or arrangement with any such officer or officers, directly or indirectly, by which you or they obtained any money from such savings bank, otherwise than as you have testified in this deposition?

A. No, sir.

Q. 164. At the time you procured the loan of \$25,000, from the National Savings Bank of Concord, for Frederick Smyth, as you have testified, state whether or not you took any part as an officer of said bank, in deciding whether the loan should be made by the bank?

A. I did not.

Q. 165. Who did decide as to whether the loan should be made? and were you present when the decision was made?

A. I was not present when the decision was made. I do not know whether the Discounting Committee or the Board of Directors made the loan.

Q. 166. Was it stated to the bank what use was to be made of the money, to your knowledge, or did any officer of the bank know what use was to be made of it?

A. Not to my knowledge.

Q. 167. Did you or not combine, confederate, or associate together with John H. Pearson, Edson Hill, Frederick Smyth, Isaac Spalding, William A. Tower, William R. Spalding, Moody Currier and others, with the intention or expectation of procuring stock enough of the Concord Railroad to control it, for the purpose of paying back dividends, increasing the capital stock thereof, or selling it for speculation, or any speculative purpose, or consolidating this with any other road or roads, or any thing of the kind?

(Objected to as leading.)

A. No, sir; I did not.

Q. 168. Did you know of any intention on the part of those who were elected at the last annual meeting, Directors of the Concord Railroad, or of any person who voted for them, to attempt to increase the capital stock of the Concord Railroad? or ever hear any suggestion of that kind from them, or either of them?

A. Not to my recollection; not that I know of.

Q. 169. Did you know of any one of the present directors of the Concord Railroad, or of any one of those who voted for them, ever in any way favoring, directly or indirectly, consolidation of the Concord Railroad with any other railroad or railroads?

(Objected to as leading.)

A. No, sir.

Q. 170. Did you not combine and confederate together with Moody Currier, Edson Hill, Frederick Smyth, William R.

Spalding, John H. Pearson, William A. Tower, and others, with an intention, expectation or agreement that money should be obtained from savings banks in New-Hampshire to purchase stock enough of the Concord Railroad to control it, for the purpose of electing yourself a director, or either of said persons a director of said road, at any time before the annual meeting thereof, or any thing of the kind?

A. No, sir.

Q. 171. In answer to interrogatory 37, wherein you say that John H. Pearson and others had an agreement with you, you name General Natt Head, Joseph B. Clark and Isaac Spalding. State whether or not, to your knowledge, said Head, Clark, or Isaac Spalding, or either of them, signed the memorandum of agreement referred to by you in answer to interrogatory 38, or took any part therein?

A. They did not, to my knowledge.

Q. 172. You say, in answer to interrogatory 38, that the memorandum of agreement was signed about the 25th of March, 1870. State whether, upon reflection, you think it was the said 25th of March; if not, state when it was, as nearly as you can?

A. I think it was not the 25th, but the 29th,—either the 25th or the 29th.

Q. 173. You have been requested by counsel for plaintiff, heretofore in this deposition, to produce the bills which you took of stock which you had purchased for the persons whom you have named. Will you now produce such bills, so far as you can, and allow copies to be made and annexed to this deposition?

A. I will produce said bills, all that I have here, and allow copies thereof to be made. Such copies are hereto annexed, marked exhibits "A, B, C, D, E, F, G, H." I may have further bills at home, and will produce such as I can find hereafter, and allow copies thereof to be hereto annexed, and marked exhibits.

(Ex. A.)

Boston, March 9, 1870.

Bought for account of J. W. Johnson,
By Spencer, Vila & Co.,
Bankers and Brokers,
No. 13 Congress street,

6. Concord R. R., 84,
Ctf. 8502.

504

(Ex. B.)

Boston, March 8, 1870.

Bought for account of J. W. Johnson,
By Spencer, Vila & Co.,
Bankers and Brokers,
No. 13 Congress street,

DEPOSITION OF

40 Concord R. R., 85,		Com.	3,400 10
			<u>3,410</u>
			1,832.50
5282— 5	}	39,000.	1,577.50
885—20		87,167.50	50
4721— 4		<u>1,832.50</u>	<u>1,627.50</u>
1761— 1			504
2960— 5			<u>2,131.50</u>
8719— 5—40 shs.	} Dan. Lawrence, 6 sh.	4185.25	
		2181.50	
		<u>2058.75</u>	

(Ex. C.)

J. W. Johnson

Bought in ac't with Henshaw & Brother.

1870.			
March 12.	8 shares Concord R. R.,	\$83.50	668.00
16.	6	82.50	495.00
"	8	83.50	668.00
"	34	84.50	2873.00
"	16	84.	1344.00
"	17	84.	1428.00
17.	16	84.50	1352.00
18.	8	83.50	668.00
23.	30	84.75	2542.50
"	157	85.	13345.00
24.	2	84.	168.00
"	40	85.25	3410.00
	Greenleaf's Comm'ns,		39.25
"	40 shares Concord R. R.,	84.50	3380.00
"	22	84.50	1859.00
26.	86	85.25	7331.50
30.	22	84.00	1848.00
"	220	85.00	18700.00
"	10	85.25	852.50
	<u>742 shares.</u>		
	Comm'ns,		185.50
	Paid, Henshaw & Brother.		<u>\$63,157.25</u>

Stamp 2 cents. April 22, 1870. Henshaw & Brother.

(Ex. D.)

BOSTON, Mar. 15, 1870.

Bought for account of J. W. Johnson,
By Spencer, Vila & Co.,
Bankers and Brokers,
No. 18 Congress street,

JAMES W. JOHNSON.

29

25 Concord R. R., 82½,		2,062.50
Com.		6.25
		<u>2,068.75</u>
1,931.25	Paid.	
150.	Spencer, Vila & Co.	
<u>2,081.25</u>		

(Ex. E.)

Boston, March 17, 1870.

Bought for account of J. W. Johnson,		
By Spencer, Vila & Co.,		
Bankers and Brokers,		
No. 13 Congress street,		
20 Concord R. R., 83½,		1,670
1 do. 88		83
Com.		<u>5.25</u>
		1,758.25
20 do. 83½ and Com.		<u>1,675.</u>
		3,433.25
ck. 4,000		
20 shs. due J. W. J.	3,433.21	
	<u>566.75</u>	
	Paid.	
	Spencer, Vila & Co.	

(Ex. F.)

Boston, March 22, 1870.

Bought for account of J. W. Johnson,		
By Spencer, Vila & Co.,		
Bankers and Brokers,		
No. 13 Congress street,		
16 Concord R. R., 83½,		1,336
16 do. 83½,		1,336
13 do. 84		1,092
<u>45</u>		<u>3,764</u>
	Com.	11.25
		3,775.25
89 do. 84½ and Com.		<u>3,806.25</u>
84		7,080.50
	10,000	
	<u>7,080.50</u>	
	2,919.50	
	Paid.	
	Spencer, Vila & Co.	

(Ex. G.)

Boston, March 25, 1870.

Bought for account of J. W. Johnson,		
By Spencer, Vila & Co.,		
Bankers and Brokers,		
No. 13 Congress street,		

26	Concord R. R.,	84	9,184
84			6.50
			<hr/>
			2,190.50
26	129665		
84			
<hr/>			
104	Settled March 25.		
208	Spencer, Vila & Co.		

(Ex. H.)

BOSTON, March 28, 1870.

Bought for account of J. W. Johnson,
By Spencer, Vila & Co.,
Bankers and Brokers,
No. 13 Congress street,

1	Concord R. R.,	83	83
43	do.	84	3,612
40	do.	83½	3,340
<hr/>		Com.	21
84			<hr/>
	14,000		\$7,056
	7,056		
<hr/>			
	\$6,944	Paid.	

Spencer, Vila & Co.

Q. 174. State whether you, or any one of the present Board of Directors of the Concord Railroad, to your knowledge, ever had any intention of increasing the rates of fares and freights over the Concord Road?

A. No, sir; not to my knowledge.

Q. 175. You have stated in this deposition that you had large amounts of freight which you sent over the through line. State where you made the contracts for such freights, and where you now make the contracts for your through freights, and whether you have done or do any local business over the Concord Road?

A. I formerly made the contracts at Ogdensburgh, N. Y. I now make them at St. Albans, Vermont. I have not done, and now do no local business over the Concord Road.

Q. 176. State what the freight is from Enfield, N. H., to Boston, Mass., for a car-load of freight; and what the freight is on the car-load from Ogdensburgh, N. Y., to Boston, same class of freight?

A. The freight from Enfield to Boston, per car-load, is \$62 or \$63, and from Ogdensburgh to Boston, \$50 or \$55.

Direct Examination Resumed.

Q. 177. (By Hon. Ellery A. Hibbard, of counsel for plaintiff.) Do you mean to say, in answer to the 165th interrogatory, that yourself said Pearson and Marshall did not know

what use was to be made of the money borrowed of the National Savings Bank?

A. I mean to say that I do n't know whether Mr. Pearson or Mr. Marshall knew it or not.

Q. 178. Have you or not any doubt as to whether they understood what use was to be made of it?

(Objected to.)

A. I do not know what they knew about it any thing more than to know they signed the note, at the time the note was given, for I never had any talk with them about the note, to my knowledge, at the time the note was given.

Q. 179. Have you or not any doubt that they understood what use was to be made of it?

A. I can't state, because I do n't know the fact.

Q. 180. What amount of Concord Railroad stock did you, or your wife, have at the time of the last annual meeting, or at any time since, which was not pledged as security for some liability?

A. I think I had three hundred and twenty-five shares at the meeting, that I voted on, which was not pledged. I have no more now, that I think of. I have pledged some of this three hundred and twenty-five shares since; I can't tell exactly. I think I have pledged in the neighborhood of two hundred shares since.

J. W. JOHNSON.

Signed and sworn to, }
Aug. 18, 1870. }

I, Josiah Minot, of Concord, in the County of Merrimack, and State of New-Hampshire, depose and say as follows, in answer to the following interrogatories:

Q. 1. (*By Hon. Mason W. Tappan, of counsel for the plaintiff.*) How were you connected with the Concord Railroad, and for how long a time?

A. I was chosen a Director and President of the road in August, 1866, and continued as such until the last annual meeting of the Corporation, May 24, 1870.

Q. 2. How much of your time did you devote to the business of the road, and what was your familiarity with its affairs?

A. I devoted most of my time to attention to the affairs of the road, and made myself familiar with them, so far as practicable.

Q. 3. Between whom were the negotiations that led to the contract of April 29th, 1870, between the Concord and Northern roads?

A. Between Mr. Stearns on behalf of the Northern Road, and myself on behalf of the Concord Road.

Q. 4. When and how did these negotiations commence, and what was said and done in the course of them?

A. Early in the month of April last, Mr. Stearns came to my office and introduced the subject. He alluded to the movements which were being made by certain parties with regard to stock of the Concord Road. He then alluded to the fact that the Northern Road, and also the Concord & Claremont, and the Contoocook River roads, in which the Northern Road was interested, neither of them then had any contract with the Concord Road, with regard to their business over that road. He mentioned that he thought that the object of the parties concerned in the movements he had mentioned, was gain to themselves in the operation; and therefore if they succeeded in their purposes, and got control of the Concord Railroad, they would probably take such course in the management of the road as would be very prejudicial to the interests of the upper roads and of the public. He wished, therefore, to make contracts which would protect the interests of those roads which he represented; and also, so far as practicable, those of the public. I alluded to the embarrassments and difficulties which had arisen in previous negotiations with him, relative to contracts for those roads. I then suggested that if he was disposed, I should be willing to make a contract on the basis of what I had previously proposed to him, and also to Mr. Lyon. Mr. Stearns said he would think of it, and wished me to give him some information and statements with regard to the Concord Road, so that he could consider them in connec-

tion with such a contract as I had proposed. I think I made some statements to him on that point, at the time of our first conversation; but more fully afterward in the course of the negotiations. At some time in the course of the negotiations he wished me to draw up a form of a contract, on the basis proposed; and I did so. It was examined by him, and some objections were made, and alterations proposed by him. Finally, the contract was agreed upon, substantially in the form it was afterward concluded. When Mr. Stearns spoke of the movement I have mentioned with regard to the Concord Road, he suggested as the courses which the parties concerned in that movement would be likely to take for the purpose of gain to themselves, were: either the creation of additional stock, or making up past dividends on the old stock of the Concord Road—either of which would require the raising of more money, and thus increase the charges to the upper roads on their business, and to the public generally; or they might dispose of their stock to other corporations or parties whose interests might be in conflict with those of the upper roads.

Q. 5. State whether or not Governor Stearns proposed any particular form of contract, or what did he propose?

A. He did not. He alluded to the situations of the roads which he represented, and their exposure to injury in case the movement I have mentioned was successful, and wished for a contract to protect those roads in that particular, and also the public, so far as practicable.

Q. 6. What further did he say he wanted, if any thing?

A. Nothing now occurs to me.

Q. 7. Who first suggested the general form of contract which was finally agreed upon? and why?

A. I proposed a contract on the basis of what I had previously proposed to him, and also to Mr. Lyon, which was, in substance, that all I wanted for the Concord Road was sufficient to pay the rate of dividends which the law allowed,—10 per cent. This proposition led to consideration of a contract on that basis, and to the negotiations which concluded in making the contract referred to. I made that proposition because it was in substance what I had previously proposed to Mr. Stearns, and also to Mr. Lyon—I refer to the basis of the contract, not to its particular terms as finally agreed to—and also because I thought such a contract would be advantageous to the Concord Road, and for its interests.

Q. 8. State what information; if any, Governor Stearns desired of you before entering into this contract?

(Objected to, as it does not appear what information is called for, or upon what subject, and as otherwise incompetent.)

A. He wished to know about the condition of the Concord Road, and more particularly of the roads operated in connec-

tion with it, their state of repair, and also what had been the receipts and expenditures as bearing upon the question of income. This was with reference to a contract on the basis I proposed, and to the expediency of the Northern Road making a contract on that basis.

Q. 9. State whether or not you gave him the information he desired ; state fully ?

A. I did. I stated to him the general condition of the roads. I also made some statements with regard to the earnings of previous years. I stated to him that the accounts for the past year had not been made up ; but I gave him what my impressions were with regard to the probable result of the accounts when made up. Sometime in the course of the negotiations, I mentioned to him that I supposed the results of the past year's operations of the Concord Road would show that reductions could be made in its tariffs, but to what extent could be determined only when its accounts should be more fully in ; and that any contract made with him must be subject to whatever reductions might be made in those tariffs.

Q. 10. Who drew up the contract, or reduced it to form, (and state whether any particular contract was taken as a precedent, or model) ?

(Defendant objects to that part of the question which is included in parenthesis, as immaterial, and otherwise incompetent.)

A. I drew up the contract. In doing so, I referred to the contract of 1860 between the Concord and the Manchester & Lawrence roads, and also to the contract between the Boston & Lowell and the Nashua & Lowell roads, making alterations to conform to what was agreed upon between Mr. Stearns and myself.

Q. 11. What suggestions, if any, did Governor Stearns make in regard to it ?

(Objected to as incompetent, and otherwise.)

A. He insisted that provision should be made with regard to certain expenditures on the roads. I refer to the provisions with regard to repairs on the Hooksett Branch, which had recently been injured by the freshet, and to the erection of certain depots, and to repairs on the Manchester & North Weare Road. To those I assented. He also referred to the bridge over the Merrimack river at Manchester, on the Manchester & North Weare Road ; but I objected to any further provision on that account. He also suggested that the amount which was to go to the Concord Road, as its part of the net earnings, should be stated in a specific sum, and not at ten per cent on the capital of the Concord Road, as that capital might be increased.

Q. 12. Wherein does this contract differ from the contract between the Concord, and the Manchester & Lawrence railroads, in its essential features?

(Objected to as incompetent, because the question is not on trial as to the validity of the Manchester & Lawrence contract with the Concord Railroad in this case; and because, if said Manchester & Lawrence contract can be competent as evidence in this case, the contract is the best possible evidence, and not the witness' version of the contract, and otherwise.)

A. The bases of the two contracts are different. This contract provides for ten per cent to the Concord Road as its share of the net earnings in any event. The contract between the Concord and the Manchester & Lawrence roads provides for a division of the net earnings between the two parties in proportion to their capitals, and in that contract provision is made for the concurrence of the Manchester & Lawrence Road in the appointment of a Superintendent, but not in any management of the road, which is intrusted exclusively to the Concord Road.

Q. 13. What was said about reduction of rates; whether or not the rates were to be fixed by the contract?

(Objected to as hearsay, and otherwise incompetent.)

A. I have before stated in part. In reply to my suggestion about such reductions, Mr. Stearns said he should be satisfied with such reductions as Mr. Kendrick and myself should think would be right, when the accounts of the year should be in, so that the reductions could be determined; and he also agreed to the provision with regard to tariffs, substantially as contained in the contract.

Q. 14. State whether there had been any previous contracts? if so, what was their character, and with what roads?

A. At the time I became connected with the Concord Road, in August, 1866, there were then existing contracts in writing between that road and the Northern Road, the Concord & Claremont Road, and the Contoocook River Road, respectively. There was also a contract between it and the Boston, Concord and Montreal Road. Those were business contracts, fixing the rates to be paid by those roads respectively to the Concord Road, on their business over that road,—that is, the rate per mile on each passenger, and the rates per mile on the different classes of freight.

Q. 15. When did those contracts expire?

A. Those with the Northern, the Concord & Claremont, and the Contoocook River, in '67 or '68, I think; and that with the Boston, Concord & Montreal Road some time prior to the time those with the other roads expired, as near as I can now state.

Q. 16. Had there been, previous to the negotiations which resulted in this contract of April 29th, any negotiations between the Concord and Northern roads, or Concord & Montreal roads, or both, in reference to new contracts? if so, when, as nearly as you recollect?

(Objected to as incompetent, and otherwise.)

A. There had been. The subject had been repeatedly mentioned between myself on the part of the Concord Road, and Mr. Stearns on the part of the Northern, and also the Concord & Claremont and Contoocook River roads. The same subject had also been mentioned between myself and Mr. Lyon on the part of the Boston, Concord & Montreal Road. These negotiations on the subject were principally before the time I made the proposition to Mr. Stearns, and also to Mr. Lyon, to which I have before referred, but the subject was occasionally mentioned after that time.

Q. 17. When was the proposition to Mr. Stearns and Mr. Lyon, which you refer to, made?

A. Some time in the fall of 1869. It was not mentioned to them together, but to each separately.

Q. 18. What was the reason why these negotiations were not concluded, and contracts made?

(Objected to as incompetent and otherwise.)

A. Mr. Stearns and Mr. Lyon wanted reductions in the rates which had been paid under the previous contracts, and I was unwilling to agree to such reductions. Another difficulty in making contracts arose from this; when the previous contracts were made, the Concord Road had the operation and management of the Manchester & Lawrence Road, the same as of its own road, under the contract of 1860 between those roads; and the previous contracts with the upper roads referred to included the Manchester & Lawrence as well as the Concord road; but the anti-railroad monopoly act, so called, of 1867, was intended to forbid that connection between the Concord and the Manchester & Lawrence Roads, and proceedings were commenced in the names of certain parties, under that act, against the Concord and also the Manchester & Lawrence Roads and their Directors, for an injunction to restrain and prevent the joint operation of the roads as it had been theretofore. These proceedings are still pending. Under these circumstances the question arose whether the Concord Road could continue to exercise any control over the Manchester & Lawrence Road, under the contract of 1860, notwithstanding the act of 1867, or was debarred by that act. I was unwilling to make any contract, including the Manchester & Lawrence Road, while that question remained undetermined, and I also was unwilling to make a contract for the Concord Road only, fixing rates per mile, without reference to the question

whether the business of those roads should be done over the Concord Road by way of Nashua, or only over the portion of it between Concord and Manchester, and there diverge to the line over the Manchester & Lawrence Road *via* Lawrence, because the rates per mile which would be satisfactory to the Concord Road, if the business should go over the whole length of its road to Nashua, would be unsatisfactory if it were to go only over the part from Concord to Manchester, and then go on another line. The upper roads would not contract absolutely to send their business by way of Nashua. Another difficulty arose in this way; by the contract of 1865 between the Concord Road and the Boston & Lowell, and Lowell & Nashua Roads; the Concord Road agreed in substance that in consideration of certain allowances made to it by those roads, all its business, at Manchester and above, with Boston, should, so far as practicable, be done over the lines of those roads from Nashua to Boston, so to give them the benefit of that business, and it further agreed that in case any of that business of its own road, or any of the business of the Northern, the Concord & Claremont, the Contoocook River, or the Boston, Concord & Montreal, with Boston, should be done over the Manchester & Lawrence by way of Lawrence to Boston, the Concord Road should pay the Boston & Lowell and Lowell & Nashua Roads certain rates on all that business, although not done over their roads. This contract made it important for the Concord Road to have that business done by way of Nashua over the Boston & Lowell and Lowell & Nashua Roads, in order to avoid the loss which would otherwise arise from its being obliged to pay the stipulated rates on that business to those roads. The interest and object of the Concord Road, therefore, was to confine that business to the route *via* Nashua instead of the route *via* Lawrence; and most of its own business, and also that of the upper roads referred to, was done by it over that route. The upper roads objected to that course of business, claiming to have their business done by way of Nashua, or by way of Lawrence, as they might prefer; and on account of the greater rates charged on their business by the Boston & Lowell and Nashua & Lowell Roads, than those for which the Boston & Maine offered to do the same business over its road from Lawrence to Boston, the cost on the business to their upper roads was greater by way of Nashua than by way of Lawrence, and they made claims on the Concord Road that those excesses of charges should be paid by it. I did not wish to make a contract with the upper roads which would bind the Concord Road to do their business at given rates per mile, without reference to whether it went by way of Nashua or Lawrence, and thus enable the upper roads to have their business done by way of Lawrence, if they should

so choose, and thus the Concord Road be obliged to make the payments to the Boston & Lowell and Nashua & Lowell Roads as before stated, or leave the Concord Road open to claims by the upper roads against it, if it should do their business by way of Nashua. The amount of the claims made by the upper roads, as before stated, was large, amounting in the aggregate, as nearly as I now recollect, to over \$30,000. I did not think it for the interest of the Concord Road, nor safe for it, to make contracts with the upper roads on the subject, leaving the difficulties and liabilities, I have mentioned, open. The upper roads would not agree to send their business entirely by way of Nashua; and they claimed damages, if it were done that way, by the Concord Road when objected to by them. I thought it preferable under these circumstances not to make contracts with the upper roads on the basis of those which had previously existed, at present. There were also some difficulties on the part of the upper roads in the way of making such contracts; they had no contracts with the Boston & Lowell and Nashua & Lowell Roads, for their business over the road from Nashua to Boston, and it was desirable for them to know upon what terms they could have their business done from Nashua to Boston, while contracting with the Concord Road for doing the business from Concord to Nashua.

(Answer objected to by defendant counsel on the ground that witness undertakes to state the contents of written instruments, contracts and agreements, without their loss being accounted for, or the instruments themselves being produced, they being the best evidence of their contents.)

Q. 19. What was the proposition which you made to Governor Stearns and Mr. Lyon?

(Objected to as ambiguous and immaterial, and otherwise.)

A. My conversation was with them separately, at different times. What I proposed in substance was, that all the Concord Road wanted was sufficient to pay the rate of dividends allowed by law, 10 per cent, and with that it would be satisfied; and if they chose to have a contract which would substantially give them the operation and management of the Concord Road, their roads agreeing to pay 10 per cent on its capital, after discharge of all its obligations for the roads operated by it, I should be willing to agree to such a contract. The proposition was only of that general basis for a contract, without going into particulars as to its terms otherwise.

Q. 20. What were your views with regard to the interests of the Concord Road, and of the public, in proposing the contract at the time you did so in 1869? Please explain fully.

(Objected to as incompetent and immaterial, calling for the witness' opinions and views.)

A. My views and motives in proposing it were these: I was satisfied that the operation of the Concord Road, in connection with those roads, would enable to afford conveniences and accommodations to the public which could not be so fully afforded while the roads were operated separately and independently; and also, that a great saving of expense could be made by such a joint operation. My view was that 10 per cent annual dividends were all that the Concord Road could legally make, and that therefore a contract which would make sure to its stockholders all they could legally have, without any risks, would be greatly advantageous to them. I had fears that the proceedings which were then pending under the act of 1867, to prevent the Concord Road from interfering with the Manchester & Lawrence Road might prove successful, and thus place the Concord and the Manchester & Lawrence Road in the relation of independent and rival roads; and after the difficulties which I had before mentioned in the way of making contracts with the upper roads on the same basis with the previous contracts, with regard to their business, satisfactory to them and also to the Concord Road, I could not think of any other course to avoid them. My idea, therefore, was, that if a contract could be made with the upper roads upon the basis I proposed, it would make harmony with those roads and be for the interest of the Concord Road.

Q. 21. State whether or not you had any conversation with, or communicated your views to, any other person or parties with reference to this matter?

(Objected to as immaterial, and otherwise.)

A. I conferred with Mr. Kendrick, the Superintendent of the Concord Road, about it. I also had some conversation with Col. Asa P. Cate, who was a stockholder in the Boston, Concord & Montreal Road, upon the subject.

Q. 22. What, if any, objections were made to your proposition?

(Objected to as incompetent, and otherwise.)

A. Mr. Stearns, and also Mr. Lyon, expressed a preference, if a contract were to be made, of the general character I proposed, that it should be on the basis of a division of the net profits between the parties, in proportion to their capital stock, or in some fixed ratio, instead of an absolute ten per cent to the Concord Road.

Q. 23. What did you insist upon as to the ten per cent, and why?

A. I insisted that the ten per cent should be made absolute to the Concord Road, because I thought it could make that amount, unless for the difficulties which I have mentioned, and which would be in a great degree avoided if the contract were made.

Q. 24. Had there been, at the time you made this proposition, and these negotiations were going on, any movement on the part of any body, against you or your board of directors, or was any such movement contemplated, so far as you know, or apprehended by you?

(Objected to as leading, and otherwise.)

A. None.

Q. 25. Were there any further negotiations about a contract, before the contract of April 29th was made, viz., between this time and the time when the contract of April 29th was made?

A. I had a few conversations with Mr. Stearns, and I think with Mr. Lyon, not long after I first made the proposition in the fall of 1869, with regard to it, but I do not recollect of any communication with either of them on the subject of a contract for two or three months prior to about February, 1870, I think. Mr. Stearns had then had negotiations with General Stark with reference to contracts between the Boston & Lowell, and Nashua & Lowell Railroads, and the Northern and Concord & Claremont, and Contoocook River roads, about their business over the Boston & Lowell, and Nashua & Lowell Railroads. He then mentioned to me that if he succeeded in making contracts for the business of those roads over the Boston & Lowell, and Nashua & Lowell roads, he should wish to confer with me about contracts for them with the Concord Road. I have no recollection of any thing further until the commencement of the negotiations which led to the present contract.

Q. 26. State whether or not you had, at the time you made your proposition for the contract in 1869, any reference or regard for any thing except the interests of your road and of the public?

(Objected to as immaterial, and otherwise.)

A. I had none, except so far as the roads operated in connection with the Concord roads were concerned in the interests of the Concord Road.

Q. 27. Wherein did the general features of that proposed contract differ from the present contract?

(Objected to as asking for comparisons between a contract in fact, and one that never had any existence, and otherwise.)

A. They were the same, that is, the general basis of both was a joint operation and management of the roads of the parties, and ten per cent on its capital stock made sure to the Concord Road as its part of the net earnings. No further provisions or details for the contract, proposed in 1869, were then mentioned or considered. They were to be determined by the parties, if they proceeded further in the contract.

Q. 28. Wherein, if at all, did your views and motives at that time, with regard to the expediency of making that contract, differ from your views and motives at the time of making the present contract?

(Objected to, on the ground that his motives are to be inferred from his acts and the circumstances which surrounded him at the time of making the contract, and as leading and otherwise objectionable.)

A. They were the same, with the addition that, at the time of making the present contract, I concurred with Mr. Stearns in the suggestions and considerations which he made to me at the time he introduced the negotiations for the present contract. All the reasons which induced me to make that proposition also fully applied at the time the present contract was made.

Q. 29. Now will you state what the controlling motives were that influenced you in making the contract of April 29th, 1870?

(Objected to on the ground that the question is entirely incompetent, and against public policy.)

A. The same which I have mentioned as inducing me to make the proposition I did in 1869; they were motives which rendered me willing to make the contract then, and would have been sufficient to make me willing to make the present contract; but the suggestions and considerations made by Mr. Stearns, also had weight with me.

Q. 30. State whether or not you submitted your views to the board of directors, as to the propriety of making this contract?

A. I think I mentioned the subject generally to some of the directors, before the contract was fully drawn up; but I can not state particulars. When the contract was prepared, ready for submission to the directors, for their action upon it, I explained its provisions, and the views and motives which had influenced me in negotiating with Mr. Stearns, and my convictions that the contract was a desirable one to the interests of the Concord Road, as well as the public. This was at a regular meeting of the directors, when all were present except Mr. Chase; and when action was taken by the directors authorizing the execution of the contract.

Q. 31. State whether or not you would have made the contract, if you had the opportunity, even if you had known that you were to continue in the management of the road?

A. I know of no reason why I should not.

Q. 32. What was your belief at the time the negotiations for the contract were going on, as to the probability of the new movements succeeding?

(Objected to.)

A. At the time the negotiations were commenced, and I proposed the contract, as I have before stated, I did not believe that the movement against the then board would be successful. At the time the contract was finally executed, I feared from what had occurred in the meantime, in the further purchases of stock, by the parties interested in that movement, that it might be successful, though I hoped not.

Q. 33. State whether or not you purchased any stock yourself, or authorized the purchase of any, with the view of protecting yourself and your board against any combination you may have learned was on foot for the buying up of stock, to turn you and your board out of office? Give the particulars.

A. I made some purchases of stock at that time, from 100 to 120 or 130 shares, I think; but I can not state dates or amounts precisely. Several large lots amounting to nearly 1000 shares and more, were offered to me; but I declined to purchase them, and no purchases were made on my account, except as above stated.

Q. 34. From your experience, what are the facts as regards the surplus earnings of the Concord Railroad?

(Objected to as incompetent, and otherwise.)

A. The accounts, as made up in the office of the Treasurer, at the close of the several years during the years which I was connected with the road, show that the surplus of net earnings at the close of the year, March 31, 1867, remaining for the Concord Road after the payment of dividends amounting to nine per cent for the past year, was about \$12,000; at the close of 1868, after paying dividends to the amount of ten per cent, less than \$4,000; at the close of 1869, after paying ten per cent dividends, a little over \$3,000; at the close of 1870, after paying ten per cent, not quite \$4,000. These sums, however, do not include all the income during the years, though it approximates near to correctness.

Q. 35. What had been the rate of annual dividends paid by the Concord Road during the last twenty years?

A. I have a minute made by me which shows that the annual dividends paid during the years 1850, 1851, 1852, 1853 and 1854, were eight per cent each; during the years 1855, 1856 and 1857, six per cent each; during the year 1858, seven per cent; during the years 1859 and 1860, eight per cent; during the years 1861 and 1862, seven per cent; during the years 1863, 1864, 1865 and 1866, eight per cent; during the year 1867, ten per cent; during the years 1868 and 1869, ten per cent.

Q. 36. Will you state how the Northern Railroad was to be benefited by this contract?

(Objected to on the ground that it calls for the witness' opinion on a matter in which he is personally interested, and as otherwise incompetent.)

A. It relieves it from all the difficulties which existed on account of want of contracts for its business over the Concord Road, and also from the same difficulties on account of want of contracts for the business of the Concord & Claremont and the Contoocook River roads, in which the Northern Road is interested. It also gives it the benefit of any excess of earnings of the roads included in the contract, after the payment provided for in the contract and the ten per cent to the Concord Road; and whatever amount of expense is saved by the joint operation of the roads will be a gain.

Q. 37. What were the benefits to the Concord Road and the public? As a railroad man, having experience in the affairs of the Concord Road, please give particulars?

(Objected to as immaterial, and otherwise.)

A. To the Concord Road relief from the controversies with the Northern Road about rates and courses of business, and from the other difficulties and embarrassments I have before mentioned, and ten per cent annually on its stock. To the public better facilities and accommodations, with a saving of expense.

Q. 38. State whether or not, at the time of the negotiations for this contract, any reference was made to the extension of the Concord & Claremont Railroad? if so, what?

A. There was. There had been an understanding between the Concord Road and the Northern Road that if the latter should aid in the extension of the railroad from Bradford to Claremont, the Concord Road would aid it indirectly in that enterprise. The extension of the road as proposed would open a new route for the business of Claremont and vicinity with Boston, by way of the Concord Road, and thus bring new business on to that road. The enterprise was, therefore, deemed desirable for the interests of the Concord Road, and the understanding was that it would aid by making large allowances in the rates charged for the new business thus brought on to it. When Mr. Stearns mentioned the subject of a contract, he alluded to that understanding, and said that the Northern Road had engaged in that enterprise, relying upon that aid from the Concord Road accordingly, but that no contract had been made which would bind the Concord Road, and he feared that the parties interested in the movements he had mentioned, if successful, might not carry out that understanding. At any rate, he thought that there should be a contract to secure what had been promised, and that was one of the reasons why he wished for a contract. When I proposed to him the contract on the basis on which it was finally made, I told

him that if it was made it must be understood that the Concord Road was not to be called upon to do any thing with regard to the extension of the road, at least during the time the contract lasted, because all the net receipts of the roads, while operated together as contemplated by the contract, over the ten per cent to the Concord Road, would go to the Northern Road. He assented to that.

Q. 39. State whether or not there was, at any time before or after your election as President of the Concord Railroad, any understanding between you and George Clough, upon the subject of dismissing the conductor suits, or either of them?

(Objected to as incompetent and immaterial.)

A. None whatever. At the time I was chosen a Director and the President of the Concord Road, my previous relations as counsel for Mr. Clough and some of the other parties interested in those suits were known to the Board of Directors. I stated to them that as I had been counsel for Mr. Clough, and others, and knew somewhat about their side of the case, I could not take any action in the further prosecution of the suits against them, nor, on the other hand, did I wish to be an officer of the road, and yet at the same time acting against it in those suits; and therefore, if I accepted the office, it must be with the distinct understanding that I was not to be called upon to act in those suits. That was entirely satisfactory, and I accepted the office accordingly.

The witness says as follows, by way of addition: In some of my previous answers, I have omitted to state some things which now occur to me. At the time of my negotiations with Mr. Stearns relative to this contract, I think I mentioned to him an understanding I had with Mr. Lyon with regard to aid by the Concord Road, to the Boston, Concord & Montreal road, in the extension of the railroad from Littleton to Lancaster, by allowances on the new business which that extension would probably bring to the Concord Road, similar to those I had proposed with regard to the extension of the road from Bradford to Claremont; and it was the understanding between Mr. Stearns and me, that, if the contract should be made, the arrangement with regard to reductions should be carried out, in the joint management of the roads during the time the contract should continue, the same as I had agreed with Mr. Lyon, though there had been no formal contract made with Mr. Lyon on the subject. It was also the understanding that if the contract should be made, and carried into operation, as contemplated, all the claims which had been made on the part of the Northern, the Concord & Claremont, and the Contocook River roads against the Concord Road, on account of their business

being done by the Concord Road, by way of Nashua, instead of by way of Lawrence, to which I have before alluded, should be considered as discharged. Many years ago the Concord Road, in settlement of a claim against it for personal damages, gave a bond to the party injured, for the payment of one thousand dollars to him annually, in semi-annual payments of \$500 each during his life. That party is still living and the obligation in force. And in 1864 the Concord Road, in a settlement with the Northern Road, made a contract by which it agreed to pay the Northern Road the sum of about \$5,700, yearly, for a term of years, which expires in 1874, I think. When I made the contract with Mr. Stearns it was the understanding that all the payments which should become due from the Concord Road, on those two contracts, during the continuance of the contract, should be treated as a charge upon the joint management of the roads as contemplated in the contract, and paid accordingly; but by inadvertence a proper provision on this point was omitted in the contract as drawn up. That omission, however, was remedied by a supplementary contract on the subject, a copy of which is hereto annexed, marked "A."

These various matters are in addition to what I have stated in my previous answers, as the matters embraced in the negotiations for the contract and the benefits and advantages intended to be secured thereby to the parties interested.

On cross-examination, deponent says as follows in answer to the following interrogatories:

Q. 40. (*By Anson S. Marshall, of counsel for defendant.*) Are you now a director and Clerk of the Northern Road, and were you a director in 1869?

A. I was chosen director of the Northern Road, I think in 1854 or 1855, and have continued such ever since, and am now. I was chosen Clerk *pro tem.* of the Board of Directors of the same road, on the day of the last annual meeting of that road, some days after the last annual meeting of the Concord Road, and I have acted as Clerk *pro tem.* since.

Q. 41. Who are now and were the other directors of the Northern Road in 1869, and where does each reside?

A. The other directors now are: Onslow Stearns, of Concord; George W. Nesmith, of Franklin; Uriel Crocker, of Boston; John A. Burnham, of Brookline; Jos. W. Clark, of Boston; Otis Daniell, of Boston. The only change which has been made in the board for many years, has been in the choice of Mr. Daniell in the place of Mr. Kettell, deceased a year or two since.

Q. 42. Have you taken an active part in the management of the affairs of the Northern Railroad Corporation, during the time you have served as director?

A. During a few of those years I have been absent, and

therefore during that time, and during the time I acted as Judge—if that was, as I think it was, since I was first elected a director, I took very little part in the management of the affairs of the road. With those exceptions, I have taken as active a part as a director, as is usual with directors who are not other officers of the road.

Q. 43. What office does Governor Stearns hold in the Northern Road beside director, and what did he hold in April, 1870?

A. He is, and was then, President of the road.

Q. 44. How many shares of stock in the Northern Road did you own on the 29th of April, 1870, in your individual capacity, and as a member of the firm of Minot & Co?

A. I then owned, individually, 25 shares; I had owned them for many years previously, and own them now. Minot & Co. then owned only a very few shares; two or three, I think.

Q. 45. When did Governor Stearns first consult you about the Northern Road's purchasing the stock of the Concord Road to the amount of about 7000 shares, of the parties for whom J. W. Johnson had purchased it, and where?

A. Some time in March, 1870, I think, Mr. Stearns called at my office and mentioned to me a proposition which he said Mr. Johnson had made to him about the purchase of some stock of the Concord Road.

Q. 46. State as nearly as you can what time in March it was, and what the proposition was which Mr. Stearns stated to you then?

A. I can not state the time more definitely than I have. The first time he mentioned the subject to me may have been earlier than March. Mr. Stearns said that Mr. Johnson proposed to him, in substance, that if the Northern Road would buy of the parties associated with Mr. Johnson in the purchase of Concord Railroad stock, some of that stock, and pay the average cost of it to them, with a bonus to him, Mr. Johnson and his associates, for their own profit, the Northern Road should have a contract with the Concord Road, which would virtually give it the management and operation of that road for twenty years. (That Mr. Johnson stated that he and his associates had secured a large amount of the stock, and were determined to have enough to secure to them the control of the Concord Road at its next annual meeting, and that [At 8:35 P. M., adjourned to 8 A. M., Friday, August 19, 1870.] they thought they could make a good thing for themselves out of the operation.) Mr. Johnson's proposition to Mr. Stearns, as stated by Mr. Stearns to me, was, that if the Northern Road would buy some of the stock, and pay a bonus to the parties, it should have a contract, as before stated; that a board of direction would be arranged, to be elected by the

stock at the next annual meeting, and give the Northern Road a contract as proposed.

(The part of answer enclosed in parenthesis objected to by counsel for defendant, as irresponsible to question, and as hearsay.)

Q. 47. Did you, on or about the 25th or 20th of March, go to Boston and meet Mr. Stearns at the office of the Northern Railroad, and Mr. Crocker and Mr. Mason W. Tappan, or either of them, and did they, or either of them, or Mr. Stearns, tell you that Mr. Stearns had agreed to buy 7,750 shares of Concord Railroad stock at \$85 per share, and pay to the parties for whom Mr. Johnson had purchased it that price, provided the owners thereof would use their influence and votes in favor of a business contract, to be made between the Northern and Concord roads? Also, to pay them in addition thereto \$100,000 after said contract should be made and completed? Also, to indemnify George Clough against the suit then pending against him in favor of the Concord Road, so that the same should be entered "neither party," without any judgment? And did you assent that Mr. Stearns should make these propositions to Mr. Johnson for and on account of the Northern Road? Please state explicitly?

A. Some time near the close of March last, the particular time I can not state, I received a note from Mr. Stearns requesting me to come to Boston without specifying for what purpose. I went down accordingly, and first met Mr. Stearns at his office, in the Old Colony Railroad Depot, I think. He then mentioned briefly why he had sent for me, that there was some probability that an arrangement would be made between him on the part of the Northern Railroad, and Mr. Johnson on the part of himself and those associated with him in the purchase of Concord stock, on the basis of the proposition which Mr. Johnson had previously made to him on that subject, as mentioned in my previous answer, and that he, Mr. Stearns, had sent for me so that in case any arrangement should be made, he might consult the Directors of the Northern Road in regard to it. I stated to him that he knew how I felt with regard to any such arrangement, and I therefore could not be a party to it. I further stated that if the Directors of the road were to be called upon to act upon the subject I should wish to know precisely, in black and white, what Mr. Johnson's proposition was on which the Directors were to act. Mr. Stearns had previously stated to me the general proposition which Mr. Johnson had made to him on the subject, as I have before stated. I think that some time in the course of the day, either while at the office in the Old Colony Depot, or subsequently at the office of the Treasurer of the Northern Railroad, Mr. Stearns stated to me, or in my hearing, what

had been proposed. It related to the purchase, from Mr. Johnson and his associates, of a large number of shares of the Concord stock at the price of \$85 per share, I think. I do not recollect whether any, or what precise number of shares was stated; it was also stated that a certain bonus, I think \$100,000 or more, was to be paid to Mr. Johnson and his associates for their own benefit; and that if the arrangement was completed as proposed, a contract for twenty years between the Northern Road and the Concord Road, which would virtually secure to the Northern Road the operation and management of the Concord Road, the former paying the latter 10 per cent only on its capital, was to be made when the contemplated new Board of Directors should be chosen at the then approaching annual meeting of the Concord Road. I did not understand that Mr. Stearns had agreed with Mr. Johnson on this arrangement, but that Mr. Johnson had proposed it, and Mr. Stearns was inclined to accept and complete it if approved by the Directors of the Northern Road, and he advised the acceptance of it under the circumstances, giving his reasons therefor. Some time in the course of the day Mr. Stearns mentioned to me that Mr. Johnson wanted some provision in the arrangement for the benefit of Mr. Clough, with regard to the suit then pending in the name of the Concord Railroad against him, to indemnify Mr. Clough in some way against that suit. Mr. Stearns wished to know of me what, if any thing, I thought the Concord Road would be willing to do with regard to that suit. I told him that the only arrangement which could be made, I thought, was a settlement on fair and honorable terms; that a certain amount was sure to be recovered in the suit, and that must be paid in full; that with regard to the other portion of the sum included in the award of the referees there was doubt, and the question was then pending before the court, and under those circumstances I thought a division of the amount thus in doubt would be reasonable for the purposes of a settlement—that is, one half of it to be paid by Mr. Clough—and that the legal costs also must be paid. I said that I was willing and would advise a settlement of the suit on those terms, and that if payment was made to the Concord Road accordingly, the suit could be stopped without a formal judgment. This is all I recollect of being said on this subject.

No action was taken by the Directors of the Northern Road on the subject, but Mr. Stearns stated the matter, and his views with regard to it, to the members of the Board present personally. Mr. Crocker and Mr. Daniell were present. I do not now recollect of any other. Comparatively little was said to me, because I had previously stated to Mr. Stearns my objections to the matter, but at the same time I stated to him that, situated as I was, I did not wish to act upon the matter wherein my

relations in the Concord Road, and my own personal interests were concerned. That I thought that his views with regard to the interests of the Northern Road and the public were correct, and therefore he might consider me as assenting to whatever he and the other Directors should think best, though I would not vote on the question. I did not assent to Mr. Stearns' making any propositions to Mr. Johnson, but the proposition, as I understood it, came from Mr. Johnson, and the question was with regard to the Northern Railroad's accepting it. Mr. Tappan was at the office of Mr. Stearns, in the Old Colony depot. I don't now recollect of seeing him at the office of the Treasurer of the Northern Railroad on that day.

Q. 48. Did Mr. Stearns make the statements mentioned in your last answer, or any of them, to Mr. Daniell, to Mr. Crocker, and yourself, when you all three were together and attending to the same; if so, were you three at the Treasurer's office of the Northern Road at that time; if not, how did he make the statements to all of you, and how did you know of his so doing to Mr. Daniell and Mr. Crocker?

A. Mr. Stearns, Mr. Crocker and Mr. Daniell, were in the office of the Northern Railroad when I was there on the day referred to; there was no formal calling the directors to order, as usual at their meetings, and Mr. Stearns talked with each of us personally, though more, I think, with Mr. Crocker and Mr. Daniell than with myself. I heard part, but not all, of his conversation with them, and his statement with regard to the general character of the proposition, and his views with regard to it. My impression is that I left before the others. I can not now state precisely what I heard at the office in the Old Colony depot, and what I heard at the office of the Northern Railroad, when Mr. Crocker and Mr. Daniell were present; but have stated the substance as near as I now recollect.

Q. 49. Were the statements made by Mr. Stearns, at the Northern Railroad office, to which you have referred, made in the presence and hearing of all three of you, when you were all three together at the same time?

A. I was not in the office all the time that Mr. Crocker and Mr. Daniell were there; but I think they were there all the time I was there. I can not say how far each of them heard what I have stated, though I suppose they understood the matter generally, and perhaps more fully than I had heard it expressed while there.

Q. 50. Were the statements that were made by Mr. Stearns, at the office of the Northern Railroad, while you were present, addressed to all three of you, and could each have heard the same, if each attended to the same, or desired?

A. At the commencement, I think, there were some remarks or statements made by Mr. Stearns to all of us general-

ly; but most of the conversation while I was present, was with one or more of us personally. There was considerable conversation between Mr. Stearns and Mr. Crocker and Mr. Daniell, which I did not hear, while I was present. I could not hear all he said to them, if I had desired.

Q. 51. Did Mr. Crocker, Mr. Daniell and yourself, all or either of you, then assent or consent that Mr. Stearns might make the arrangement under the circumstances, in relation to the purchase of the Concord stock, on account of the Northern Railroad, on the terms and conditions you have stated, if he thought best?

A. I have already stated what views and position I took with regard to any action by myself in the matter; that without taking any action directly, I might be considered as assenting to whatever the other directors thought best. I do not recollect of hearing any expression of their final conclusions, on the part of Mr. Crocker and Mr. Daniell, or whether they had come to any at the time I left.

Q. 52. Did they, Mr. Crocker, Mr. Stearns and Mr. Daniell, discuss the matter there in your presence, and did you afterward learn from Mr. Stearns, or any one else, that they, Mr. Crocker and Mr. Daniell, consented to the arrangement?

A. They did discuss the matter while I was present; and I suppose, also while I was out of the office; but they did so more between themselves than with me. Afterward I got the impression, I can not state how, that the result was favorable to the arrangement, if Mr. Stearns should think best to conclude it, and no new difficulty appeared.

Q. 53. You say, in answer to interrogatory 47, "that if the directors of the road were to be called upon to act upon the subject, I should wish to know precisely, in black and white, what Mr. Johnson's proposition was, on which the directors were going to act." Was the proposition of Mr. Johnson caused to be reduced to writing by Mr. Stearns, as he, Mr. Stearns, understood it, and that day submitted to you, or other Directors?

A. My remark to Mr. Stearns was made at the time I first met him on that day, and when he told me why he had sent to me to come down. Some time after that, on the same day, I saw Mr. Tappan and Mr. Johnson at the Old Colony depot; but I had no communication with Mr. Johnson whatever. I think that Mr. Stearns afterward told me that he had had communication with Mr. Johnson on the subject, and had got a statement in writing from Mr. Johnson, of what he proposed. I think he stated to me at the Old Colony office, or at the Northern office, the substance of that proposition, as I have before stated. I do not recollect whether he showed me the writing itself, or showed it to the other directors.

Q. 54. At the time Mr. Stearns stated to you and the other directors the proposition, did he have the writing or the proposition reduced to writing in his hand, or before him?

A. I do not recollect of seeing it at any time while I was at the Northern Railroad office, nor whether I saw it at the Old Colony office.

Q. 55. Did you ever see it? if so, when, for the first time, as well as you can state?

A. I can't say that I ever saw it; if I have, I think it must have been while I was at Boston, on the occasion I have referred to. When I testified before the Committee of the Legislature, that paper was referred to, and I was inquired of about it; and the original, or a copy, was then referred to, and perhaps shown me, for the purpose of inquiring of me about it.

Q. 56. Are you now prepared to say that you did not see, that day, either at the Old Colony depot, or the Northern Railroad office, a writing substantially in these words:

"1. To buy not exceeding 7750 shares, at \$85 per share, to be paid presently; present owners of said shares hereby agreeing to use their influence and votes in favor of the contract herein-after mentioned.

2. A business contract to be made between the roads.

3. When such contract shall be made and completed, an additional sum of one hundred thousand dollars to be paid in full for the balance of the price of said stock.

4. The purchasers to indemnify George Clough against the suit now pending against him in favor of Concord Railroad, so that the same be entered *neither party*, without any judgment in the same.

5. The Northern Railroad to pass a vote, in substance, that the President be a committee to make a business contract with the Concord Road, upon such terms as he may deem for the interests of his corporation, and to make such arrangements for that purpose as he may deem expedient."

A. All I can say is that I was informed, either from seeing the paper, or hearing it read, or hearing a statement of its contents, what Mr. Johnson's proposition was.

Q. 57. Was that proposition, which you either saw in writing, or heard read that day, or that was stated to you, substantially, if not exactly the same, as stated in the question in interrogatory 56?

A. I do not recollect the particular terms, or all the provisions of the proposition, as I then understood it. I can only say that the general provisions of the proposition, so far as I now recollect them, were substantially the same as expressed in the quotation above.

Q. 58. Can you now say that there is any thing contained in the quotation in interrogatory 56, which was not in the

writing which you saw that day, or heard read, if any; or in the proposition which was stated to you?

A. I can not say whether there is, or is not. I have before stated all I can say on that subject.

Q. 59. Can you now swear that a writing, containing substantially what is in quotation in interrogatory 56, was not that day read or shown to you, Mr. Crocker and Mr. Daniell, at the Northern Railroad office, in Boston, by Governor Stearns?

A. I can not state any thing further than I have already done, in answer to interrogatory 54. I can not say whether it was shown to Mr. Crocker and Mr. Daniell, or not.

Q. 60. Did you have any communication or talk with Mr. Tappan that day, in Boston? if so, where?

A. I did when I saw him at the Old Colony office.

Q. 61. What time in the day was it?

A. I think it was in the course of the forenoon.

Q. 62. What time were you with the directors, as you have stated, at the Northern Railroad office? what time in the day?

A. My impression is, early in the afternoon.

Q. 63. In your answer to interrogatory 47, you say that a contract for twenty years, between the Northern Railroad and the Concord Railroad, was to be made, when "the contemplated new Board of Directors should be chosen at the approaching annual meeting of the Concord Railroad?" What do you mean by the phrase, "the *contemplated* new Board of Directors?"

A. Mr. Stearns had previously stated to me what he understood that Mr. Johnson and his associates, in their purchases of Concord stock, intended to accomplish, if they could, that is, a change in the Board of Directors, by the choice of some of their own number in the place of the then present Board. By the phraseology referred to I meant the new board which they wished to elect; I mean Mr. Johnson and his associates.

Q. 64. Did you go to Boston again, at the request of Mr. Stearns, in reference to the negotiations for the purchase of Concord stock referred to in your previous answers? if so, when, and whom did you meet, and where?

A. I do not now recollect of it.

Q. 65. Did you subsequently learn that the proposition, reduced to writing the day you were in Boston, was declined by the parties owning Concord stock, represented by Johnson?

A. Mr. Stearns, I think, afterward informed me that all but two or three of the parties associated with Mr. Johnson, including Mr. Johnson, were desirous of making the arrangement; but those two or three, as he understood, did not agree.

I mean the arrangement which had been proposed by Mr. Johnson, and reduced to writing, as I understood.

Q. 66. When did you first learn that the proposition was declined?

A. I think it was shortly after the time I was at Boston, as above stated — I mean a few days.

Q. 67. If the proposition had been agreed to, namely, to purchase the Concord Railroad stock at \$85 per share, and pay the bonus of \$100,000, was said stock and bonus to be paid for out of funds of the Northern Railroad, or funds to be procured by it, as you understood it?

A. I did n't understand that it was contemplated that the stock should be bought and paid for by the Northern Road; but that it should provide for the amount to be taken of the parties, and paid for to them. I supposed it would be taken and paid for, really, by individuals interested in the Northern Road; in part, at least, if not in whole. The bonus, I supposed, would be paid by the Northern Road, in some way. I do n't think that any definite plan was fixed with regard to those matters; that is, the final disposition of the stock, or the way in which the bonus should be raised and paid; but they were left to be considered, when it should be ascertained whether the arrangement was to be carried into effect

(Adjourned at 12 M., to 2 P. M., Aug. 19.)

Q. 68. You have referred to the contract between the Manchester & Lawrence and Concord Railroad, dated December 27, 1860, which you say you used as a model or form in drawing the contract of April 29, 1870, between the Northern and Concord Railroads; will you annex a copy of the contract dated December 27, 1860, to this deposition?

A. I referred to that contract when I drew up the present contract, as a form, in part, so far as it was applicable to the agreement with Mr. Stearns. The paper hereto annexed, marked "*B*," is a copy of it.

Q. 69. Did not the stockholders of both the Concord and the Manchester & Lawrence roads, by a vote at the stockholders' meeting, approve of this contract, a copy of which is hereto annexed, marked "*B*?"

A. I can not state with regard to it.

Q. 70. Have not you understood that said contract, a copy of which is marked "*B*," hereto annexed, was submitted to the stockholders of both corporations, and approved by them at regular meetings of the corporations?

A. I do n't recollect of my having any knowledge upon the subject

Q. 71. Will you produce a copy of the contract between the Nashua & Lowell and the Lowell & Boston roads, under which said roads are operated, and to which you say you re-

ferred, in making the contract of April 29, 1870, and annex the same to this deposition and mark it "C?"

A. I have not, to my knowledge now, any copy of that contract, and have no means, so far as I know, of obtaining any, except from the records of those roads.

Q. 72. When and where did you examine that contract, at the time you drew the contract of April 29, 1870, and where is the copy you say you examined?

A. I had a printed copy at my office, in the Concord Railroad depot, contained in some report, I think, of those roads. I suppose that report to be among the papers I left in the office when I left the road in May last.

Q. 73. Was not that contract submitted to the stockholders of both corporations, at regular meetings thereof, and by them approved and assented to? and is it the contract under which the roads are now operated and managed?

A. I have no knowledge whatever with regard to the first point of your inquiry; and with regard to the second, as I suppose, the contract I refer to is the one under which those two roads are now operated together.

Q. 74. Do you know of any contract under which two or more roads are operated in this State under one management, which was not submitted to the stockholders of such railroad corporations at regular meetings thereof, and approved by them? if so, name the railroads and the contracts, giving the dates of said contracts, as nearly as you can, and any other knowledge which you have, by which such contracts may be identified?

A. Except in the case of the present contract between the Northern and the Concord roads, of April 29, 1870, I do not now recollect of having any personal knowledge with regard to contracts of that character, and therefore can not state with regard to it. Since making this answer, it occurs to me that a contract was recently made between the Concord, and Manchester & Lawrence roads, with the Suncook Valley road, relative to the lease of the latter road to the former. That contract was made while I was an officer of the Concord road, and was authorized by prior vote of its stockholders, and I suppose by those of the other two parties, though I can not state positively.

Q. 75. Was not the lease of the Suncook Valley Railroad authorized by act of the legislature, either in the charter thereof, or an amendment thereto?

A. I have understood that there was some such provision; but have no knowledge of it.

Q. 76. When you were elected President of the Concord Railroad, was there a written contract between the Concord Railroad and the Northern and its branches, and between the

Concord Railroad and the Boston, Concord & Montreal Road, by which the rates which should be paid the Concord Road by each of those roads, for carrying passengers and freight from those roads over the Concord Road, was established and agreed upon? if so, give the dates when those contracts went into operation, and when they expired, and also state whether they were alike, substantially, in their terms and conditions?

A. There were contracts in writing between the Concord road and the Northern, the Concord and Claremont and the Contoocook roads respectively, I think, by which the rates to be paid by each of those roads to the Concord Road, on their passenger and freight business over that road, were agreed upon and fixed. My impression is, that those contracts were dated somewhere in 1864; but were to take effect as from some prior date in 1862 or 1863, and to continue for the term of five years. I have no copies of those contracts, and not sufficient recollection of their contents to state with regard to that. They are recorded in the records of the Concord Railroad, I think. I have no knowledge of any written contract at the time I became an officer of the Concord Road, between that road and the Montreal road; but understood that there was a contract of some kind between those roads, on the subject of rates for the business of the Boston, Concord & Montreal roads, over the Concord Road. I understood that the contract, whatever it was, expired in 1867; but I have no definite knowledge on the subject.

Q. 77. Did the Concord Road, during the time you were president thereof, continue to carry passengers and freight from the Northern Road, and other roads above mentioned, and the Boston, Concord & Montreal roads, at the rates for passengers and freight stipulated in the written contracts last referred to?

A. At some time during that time, there was, I think, an increase of charges to the Contoocook Road, on some of its business to and from Hillsborough, and also to the Concord & Claremont Road, on some of its business to and from Bradford; but I may be mistaken. With these exceptions, the business of those roads was done on the same rates as had been charged while the contracts continued.

Q. 78. Are not the Concord & Claremont and the Contoocook river roads owned by the Northern Road, substantially, and in fact; but nominally run as independent corporations?

A. I so understand it.

Q. 79. Did you find any difficulty in collecting the rates charged for carrying passengers and freight on those several roads?

A. So far as I know, they were paid by those roads as usual; but with frequent complaints, and claims that there

ought to be reductions, more particularly since the reductions had been made on the Concord Road on its business in years prior to the present, and the payments have been made with repeated protests, and claims for damages or allowances on account of the business of those roads being done by the Concord Road, by way of Nashua, instead of by way of Lawrence, whereby those roads have been obliged to pay greater rates on their business to and from Boston, by way of Nashua, than they could have had it done for by way of the Boston & Maine Road by way of Lawrence — to which I have before referred in this deposition.

Q. 80. Have not those complaints been made by the upper roads since 1865, and especially by the Boston, Concord & Montreal Road, as to the increased expense by reason of sending passengers and freight?

A. I know that they have been made during the time since I became an officer of the Concord road, and protests or notices on that account have been made by the Boston, Concord & Montreal in a more formal way than by the other roads; but the complaints and claims have been made alike by all the roads, and I think that the amount claimed by the Northern, the Concord & Claremont and Contoocook roads, in the aggregate, has been greater than that claimed by the Boston, Concord & Montreal.

Q. 81. Did not you refuse to make the reductions claimed, during your administration, by all said roads?

A. I did.

Q. 82. Do not the same difficulties and embarrassments exist now, which existed prior to April 29, 1870, with reference to making the contract between the Boston, Concord & Montreal Road and the Concord Road, as to the rates which should be charged for carrying passengers and freights from said Boston, Concord & Montreal Road by the Concord Road?

A. If there has not been any satisfactory arrangement made since I left the road in May last, they would exist; but under the provisions of the contract of April 29, 1870, the questions with regard to rates of business over the Concord Road, becomes of much more importance to the Northern Road than to that road, because the reductions asked by the Montreal Road, if allowed, would not affect the ten per cent to be paid to the Concord Road as stipulated by the contract.

Q. 83. The question which I asked, was, if the same difficulties and embarrassments did not exist now which existed prior to April 29th, 1870, with reference to making contracts between the Boston, Concord & Montreal and the Concord roads with reference to the rates to be charged for carrying passengers and freights from the Boston, Concord & Montreal Road over the Concord Road, which said difficulties and em-

barassments you have said grew out of the uncertain relations between the Concord and Manchester & Lawrence Roads; or in other words did the contract of April 29, 1870, change the disability of the Concord Road to make a contract with the Boston, Concord & Montreal Road as to the rates of carrying their business?

A. It does not, as I understand the question.

Q. 84. Then do the same disabilities and difficulties exist now with reference to making a contract between the Concord Road and the Boston, Concord & Montreal Road, with reference to the rates to be charged for doing the business of the Boston, Concord & Montreal Road that existed prior to the contract of April 29th, 1870?

A. They do, so far as I know (but the pecuniary interest of the Concord Road in that matter, under that contract, is different from what it was before the contract was made).

(Part of answer inclosed in parenthesis objected to by counsel for defendant, as not responsive to the answer.)

Q. 85. Are not the Boston, Concord & Montreal Road, and the Northern Railroad, competing lines for the business at Wells River and above that point, that comes to Concord, and is destined to places below?

A. That business can be done by the lines of the Passumpsic and Northern roads, or by the line of the Boston, Concord & Montreal Road; but, so far as I know, the officers of the Northern Road do not intend to make competition with the Boston, Concord & Montreal Road for that business.

Q. 86. You say in this deposition that you told Asa P. Cate, a stockholder in the Boston, Concord & Montreal Road, and James R. Kendrick, then Superintendent of the Concord Road, of your intention to make the contract of April 29th, 1870. Did you consult the Directors of the Concord Road before you submitted it to them for their approval?

A. So far as Asa P. Cate is concerned, I have not intended to make any such statement as is implied in your question, and if I have been so understood, it is an entire mistake. I have no recollection of ever mentioning the contract of April 29, 1870, to Mr. Cate at any time before it was concluded. What I intended, and think I have testified is, that I mentioned to Mr. Cate the general proposition which I have before testified to as having been made by myself to Mr. Stearns, and also to Mr. Lyon, with regard to a contract in 1869. I did confer with Mr. Kendrick with regard to the contract of 1870, at different times while it was in the course of negotiation and preparation, and consulted him with regard to it, — some of its provisions. I think I mentioned the matter to a greater or less extent, and more particularly with regard to the general basis proposed for that contract to some of the

directors, before the time of the directors' meeting, when it was submitted to them for their action; but I am unable now to state any further particulars on that point.

Q. 87. Which of the directors did you consult, before April 29, with reference to the contract, and when, and where?

A. I can not state any further particulars with regard to any conference with any of the Directors of the Concord Road on the subject, before the day of the meeting when they acted upon the matter.

Q. 88. Can you now say that you consulted either of the directors about the contract, or its terms, or said to them or either of them, that you proposed to make such a contract as that of April 29, 1870, before the day it was submitted to them for action thereon?

A. My strong impressions are as I have before stated. I think they are correct. I can not say any more.

Q. 89. What is your impression as to which of the directors you consulted, and when?

A. I can not state any thing further on that point.

Q. 90. Did you consult any large or small stockholder of the Concord Road, before the execution of the contract of April 29, 1870, as to the contract, and the propriety of making the same? if so, whom and when?

A. I have no recollection now, of mentioning the subject, except to the superintendent and some of the directors of the road. I mean before the time of the meeting when the directors acted on the subject.

Q. 91. You have already stated that you are clerk *pro tem.* of the Northern Road; will you annex to this deposition a certified copy of the records of the directors' meetings, held May 9, 1870?

A. I will; it is hereto annexed, and marked "C."

Q. 92. You may state the condition in which the Concord Road was, April 29, 1870, with reference to its road-bed, depots, rolling stock, and that of the roads operated by it?

A. That of the Concord Road proper I considered to be good, and superior in some respects to what it had been in years past; the condition of the Concord & Portsmouth Road I considered fair, but not so good as that of the Concord Road, with the exception, however, that the station buildings at Suncook and Candia were very much out of repair, and insufficient. And the station buildings used in connection with the Boston & Maine Road, at Newmarket Junction, were not what the place required, and there was no station building at Stratham. Improvements in those respects had been in contemplation for some time, but they had not been made. The Manchester & North Weare Road was in worse condition than either of the others, and was greatly out of repair in the matter of fences. The con-

struction of the Suncook Valley Road had not been completed, and much remained to be done in that respect, and also with regard to depots and station buildings and other particulars. On the Hooksett Branch, so called, there was a want of repair on the bridges over the river near Hooksett, a portion of the work had been carried away and a temporary structure supplied its place. The bridge on the Concord & Portsmouth Road, near Bow Crossing, was also in need of considerable repairs. The rolling stock I considered in fair condition.

Q. 93. To what extent have the number of engines, the number of passenger and freight cars been increased during the last four years?

A. There has been an increase, but I can not state how great.

Q. 94. Has such increase of passenger and freight cars been paid for out of the earnings of the road during that time?

A. It has in the most, if not entirely.

Q. 95. Has not the business of the Concord Road during the last four years, in passengers and freight, been largely increased, and has not that increase been each year?

A. It is difficult to state with particularity on that point, for this reason: formerly the Concord and the Manchester & Lawrence Roads were operated together, and the accounts kept as of one road, but since the act of 1867 took effect they have been operated independently, and I have no personal knowledge with regard to the Manchester & Lawrence Road. I suppose, however, that there has been a considerable increase in the amount of business of the Concord Road during the years you mentioned, but there has not been a corresponding increase of receipts, because reductions have been made from time to time in the rates of fares and freights.

Q. 96. Were not the one thousand dollars which you say was paid annually, which was paid to Geo. P. Jewett, and the five thousand seven hundred dollars which you said was paid annually to the Northern Railroad, as stated in your addition to your direct examination, paid out of the earnings of the Concord Road each year?

A. Payments have been made of those sums for several years, and the amounts paid in each year have come from the earnings of the road during the year.

Q. 97. You say, in this deposition, as I understood you, that you had promised to aid in the extension of the Boston, Concord & Montreal Road, and the Sugar River Road, by way of allowances. Had those promises been submitted to the Directors of the road, and approved, and any record thereof made? Also state in what manner you had promised to make such allowance or payment.

A. There had been no formal submission of those matters to the Directors for their action; they had taken no action upon

the subject, and there was no legal obligation on the part of the Concord Road in those matters; but when those extensions were under consideration, Mr. Stearns, on account of the Northern Road, and Mr. Lyon, on account of the Boston, Concord & Montreal Road, applied to me, as President of the Concord Road, to know what it would do in aid of those enterprises, in case they should be carried on. I told them what I thought it would be for the interest and right for the Concord Road to do, and what I believed the Directors would be willing to authorize. The matters lay in that way with the understanding that at a proper time action would be taken by the Directors of the Concord Road on the subject, and Mr. Stearns and Mr. Lyon expected favorably. The allowances proposed were to be by greatly reduced rates on the new business which it would be expected would be brought by the extensions on to the Concord Road, for a series of years.

Q. 98. Did you promise Mr. Stearns that such allowance should be equal to the payment of \$80,000 to the Northern Road, in aid of the construction of the Sugar River Road?

A. Mr. Stearns calculated that there would be a very considerable loss in value, in the construction of the railroad from Bradford to Claremont: that is, that the net income for several years at first, from the business done on that railroad, would not be sufficient to pay six per cent upon its cost, and he thought, as the roads below Concord would derive great advantage from the construction of the road, by the new business which it would bring on to them, they ought to bear their proportion of that loss, or contribute toward the cost of constructing the road. The sum which he named was from \$75,000 to \$100,000. I told him that I thought it would be for the interest of the Concord Road to contribute its fair share, and I should recommend to the directors to do so, and I thought they would do so. I stated, however, that the Concord Road would not, probably, contribute by payment of money at the outset; but that whatever it did, would be by allowances on its charges on the new business brought by the railroad on to its road, for a series of years, until the aggregate should amount to what the Concord Road should contribute. This is the substance, as I recollect it. No definite portion of the sum which it was proposed by Mr. Stearns to be contributed by the roads below Concord, was fixed as the share of the Concord Road; that would depend, somewhat, upon the action of the other roads below Concord in the matter.

(15m. of 6 P. M. adjourned to 7 P. M.)

Q. 99. Will you annex hereto the reports of the Directors of the Concord Railroad Corporation for the years ending March 31, 1869 and 1870, No.'s 28 and 29?

A. I will; they are hereto annexed and marked "D," and "E."

Q. 100. On page 3, of the twenty-ninth annual report, it appears that \$171,117.85 of the earnings for the year ending March 31, 1870, was paid for road repairs, and on page 4, of the 28th report, that \$129,382.49 of the earnings for the year ending March 31, 1869, was paid for like repairs. How much of each of said sums, as nearly as you can state, was paid for new rails, and how much for new sleepers?

A. I have no means at hand to make any statement on that point; it could be ascertained only by reference to the accounts of the road, in the Superintendent and Treasurer's offices. I can state generally, however, that an unusual amount of new rails and of road repairs were used, and arose during the year ending March 31st last.

Q. 101. How much did the Concord Railroad pay per ton for new iron rails, in the year ending March 31st, 1869, and March 31st, 1870?

A. The amount paid for most of the iron rail bought in the year ending March 31st, 1870, was about \$83 per ton; that for the iron bought in the preceding year, a little less, I think.

Q. 102. From the twenty-ninth report, it appears that \$23,762.69 of the earnings of the year was expended for depot repairs; did that cover the costs of any new depots, or other buildings? if so, what were they, and about how much did each cost? also, was the new paint shop, built at Concord, from the earnings of the year ending March 31, 1870? if so, how much did it cost, and in what item is it included in the report? also, how many new freight and passenger cars, and new locomotives, were built in the year, and paid for from the earnings of the year, what did they cost, and in what items are their cost included?

A. I have no means at hand of statement, except what appears in the report referred to; that shows what new buildings had been erected during the year, of any considerable importance. The cost of each I have no means of stating, unless otherwise stated in the report; they were paid from the earnings of the road during the year, I presume, and are included under some of the general heads mentioned in the expenses. And with regard to the cars, locomotives, &c., I can only state what appears in the report. I can not state whether all the cost of them was paid from the earnings of the year; those matters are kept in appropriate accounts in the office of the Superintendent. There may be credits to those accounts from different sources, though I do not know how it may be in the particular case. All that I can say is, that the balance charged to those accounts beyond any credits, were probably paid from the earnings of the year.

Q. 103. It appears from said report, page 5, that \$15,000 of the earnings for the year ending March 31st, 1870, was appropriated toward new depots. For the building of what depots was this appropriation made?

A. That was designed to cover a sum provided in the contract of April 29, 1870, to be furnished by the Concord Road for the erection of new station buildings at Suncook, &c., as mentioned in the contract.

Q. 104. It appears also from said report, page 7, that the Concord Road sold to the Suncook Valley Road some old rails. How much did the Suncook Valley Road pay the Concord Road for all the rails thus purchased, and how did it pay for the same?

A. The report indicates the general character of the transaction referred to. The Concord Road sold to the Suncook Valley Road a large amount of rails from its own tracks, and supplied the place of the same in its own tracks by the purchase of new rails. In making up the account of road repairs, the difference between the amount paid for new rails and that charged the Suncook Valley Road for the rails sold to them, was charged as road repairs. I am not able to state the amount of the sales of iron to the Suncook Valley Road, but my impression is that it was over a hundred thousand dollars. That was charged in account against the Suncook Valley Road, with various other matters, and on that account the Suncook Valley Road paid a large amount in cash, leaving, however, a balance of about sixty-three thousand dollars due from the Suncook Valley Road to the Concord Road, at the close of the year. The accounts and papers of the Concord Road will show more fully with regard to these matters.

Q. 105. Did the Concord Railroad run in debt for any of the new rails that it purchased to replace the old rails that it sold to the Suncook Valley Railroad as you have stated? if so, to whom is it indebted for the same?

A. It paid for the same in full, I presume. I am not aware of any indebtedness to any one on that account.

Q. 106. Was it paid out of the earnings of the year ending March 31, 1870?

A. The difference between the price paid for the new iron and that charged in account against the Suncook Valley Road for the iron sold to it, so far as it is included in road repairs, was paid from the earnings of the year, and whatever portion remains not included in road repairs was paid either from the cash received from the Suncook Valley Road or is represented in other funds of the Concord Road. All that was paid toward that iron from the earnings of the year, is what is included in the items of expense in the report, and principally if not entirely in road repairs. The whole amount of cash paid by the Suncook Valley Railroad on account was, I think, \$110,000.

Q. 107. Did the Concord Railroad run in debt to any considerable amount, for any of the expenditures that it made on account of the Suncook Valley Railroad which was charged in the account to which you have referred? and was it so indebted on the 31st day of March, 1870, or afterward, while you were in office as President thereof? if so, to whom and for what amount?

A. Not to my recollection. The records in the Superintendent's office of the Concord Road will show about that.

Q. 108. On the 29th day of April, 1870, did the Concord Railroad own any shares of the capital stock of the Suncook Valley Railroad? if so, how many?

A. None; but it held a large number of shares as collateral security for the balance due from the Suncook Valley Road to it, with a right to sell at not less than \$95 per share. The contract in the Concord Railroad office shows precisely about this.

Q. 109. Was there a year while you were President of the Concord Road that additions were not made to the equipments and rolling stock of the road, and permanent improvements were not made upon its road and appurtenances, and all paid from the earnings of the year? if so, what year was it?

A. I have no means at hand to make any comparison between the different years. I can only say that the result of all the years of my connection with the Concord Road has been, I think, in important improvements of the road and its equipment, and I can not state what would be the result of all those improvements with reference to depreciations in other respects, except that I think that, upon the whole, there has been an improvement. What has been done has been done from the receipts of the road.

Q. 110. You have given the dividends that have been paid by the Concord Road from 1850 to the present time; will you now give the surplus that has been set aside and added to the contingent fund each year, from 1850 to the present time. Also state what that contingent fund amounted to on the 31st day of March, 1868, and does it appear, on page 7 of the 28th report hereto annexed, in what that fund was invested?

A. I have no means to state with regard to the surplus and additions to the contingent fund except so far as applies to the years during which I have been connected with the road. With regard to the amount of the contingent fund, March, 1858, and in what it was invested, I can not add any thing to what is stated in the report to which the inquiry refers.

Q. 111. Does it not appear from the report of the Concord Railroad for the year ending March 31, 1859, that the amount of the contingent fund at the end of the last preceding year was \$47,763.42; and does it not appear from that report and the annual reports since that time that the following named

sums have been added to the contingent fund each year since that time: namely,

For 1859,	the sum of	\$15,294.21
1860,	"	6,650.29
1861,	"	19,140.82
1862,	"	20,286.18
1863,	"	34,321.68
1864,	"	16,049.25
1865,	"	31,862.80
1866,	"	11,887.98
1867,	"	8,825.18
1868,	"	3,165.17
1869,	"	3,914.48

A. You have taken the sum mentioned in your inquiry from reports in your own hands belonging to yourself. I have no doubt that you have stated them correctly as they appear in those reports. I have no knowledge of my own with regard to the statements in any of those reports, except those made during the years I have been an officer of the road.

Q. 112. You say in this deposition that you purchased from one hundred and twenty to one hundred and thirty shares of Concord Railroad stock before the annual meeting last May. How long before said annual meeting did you buy it, and how much did you pay per share for it?

A. I have not the means at hand to state the times of the different purchases, nor can I state them from recollection. My impression is that the purchases were made within three or four months preceding the annual meeting. I can not state the highest price paid, but I think it was about \$83 per share.

Q. 113. You say that you had offered you several large lots, amounting to some thousand shares. By whom and when were they offered to you, and at what price?

A. The greatest lot was offered some time in March, I think about four hundred shares. The offer was made to me through Mr. Weld, of Boston, one of our Directors; there were offers of other large lots made to me at other times, but I can't state the particulars. At the time the large lot I have first referred to was offered, there were other lots offered with it, making the aggregate amount offered then over eight hundred shares, I think. My impression is that the prices asked for the eight hundred odd shares was about \$84 per share. I now recollect only the name of Mr. Shillaber as being the owner of the large lot first mentioned, as I then understood.

Q. 114. Did you employ Anson Merrill, of Manchester, to buy stock for you in Grafton county, at a price not exceeding \$85 per share, and did he buy a number of shares at or about that price, also, to solicit proxies for you; if so, when did you employ him?

A. I requested Mr. Merrill, whom I knew to be acquainted with the stockholders at Plymouth and vicinity, to go and see some of those stockholders and advise them with regard to the movements being made against the Concord Road, and to express to them what his views were with regard to the merits of that matter. I wished him also to urge on them the importance of their attending the meeting, or having their stock represented by proxies, and I think I at that time, or subsequently, gave, or had furnished to him, some blanks for proxies for that purpose; I think it was subsequently. He afterward told me that he had been up there and had seen several, if not most of the stockholders, and said they would attend or have their stock represented, he thought, fully. He then mentioned that one party there might wish to sell a portion, if not all, of her stock, and that he had told her that if she should wish to sell, I would take it. He subsequently notified me that she wished to sell, and he made the arrangements for the purchase of it on my account, and I took it and paid for it. My impression is that the price was about \$82 or \$83 per share.

Q. 115. Did Mr. White (Nathaniel), of Concord, buy 400 shares of stock or thereabout, upon your suggestion or request, at about \$85 per share, in the month of March, 1870, or thereabout?

A. I know of his buying 300 shares, or more; but it was not at my request. He did it of his own accord, and I think he said he was ready to buy more. I do not think the price he paid was so high as you have mentioned in your inquiry.

Q. 116. Did you not use these words in your testimony before the special committee of the legislature, when inquired of whether you and your friends purchased Concord Railroad stock: namely, "I bought about 100 shares of Concord Railroad stock after I learned that these gentlemen were purchasing stock, and Mr. White purchased enough to make 500 shares. He talked with me about buying the stock"?

A. I can't state as to the precise words; but I think I stated in substance as you have inquired. Mr. White bought enough, with what he had at some time before the annual meeting, to make the amount he owned up to 500 shares. He bought it on his own account.

Q. 117. Did you yourself solicit proxies from the stockholders in Portsmouth and vicinity, and request Mr. Hackett to obtain as many as he could to vote for yourself and the old Board of Directors at the annual meeting last May?

A. I have no recollection of soliciting any from stockholders there, myself; but I either told or sent word to Mr. Hackett, that I should feel obliged if he would take such proxies there as stockholders were disposed to give him, with the understanding that they would be used to vote for the old Board of Directors.

Q. 118. Did not you and your friends obtain proxies for about four thousand shares of stock of the Concord Railroad, which were voted for the old Board of Directors, at the last annual meeting, largely if not entirely by residents in Concord? and did you not procure John M. Hill, of Concord, to annex those proxies to ballots for the old Board, and to see that they were properly voted? also state whether proxies for twenty-three hundred shares were voted upon twenty-three ballots for the old Board?

A. Proxies for a large number of shares in the whole were given by female stockholders, principally in different sections; the greater part, however, were given by stockholders in Boston and vicinity, I think; and on the day of the meeting proxies were brought into the office, and some given there by parties who did not attend the meeting themselves. I did request Mr. Hill to properly prepare those proxies with ballots annexed, and see that they were properly voted on at the meeting, and he did so. I have no means of stating to the number of those proxies, or the amount of shares which they represented. Ever since I have been connected with the Concord Road it has been the practice to bring or send in the proxies of parties who could not or did not wish to attend the meeting themselves, in the way I have mentioned, for the purpose of having them properly prepared and represented at the meeting; it has been the practice to employ some clerk or other person to attend to them, in the same manner I requested Mr. Hill to. The proxies are chiefly from females.

Q. 119. Did you ever know a year when there was half the number of proxies obtained as was voted for the old Board this year? if so, when was it?

A. There was an unusually large number of proxies represented, and for the old Board, at the last meeting, but I can not state the comparison with previous years, any more than I have.

Q. 120. When you made the contract of April 29, 1870, did you not understand that the then Board of Directors of the Concord Road were to go out of office? and did not you fear it, and did not you make it with reference to that result?

A. I have before stated in this deposition my view with regard to the improbability of the success of the movement made against the old Board, when the negotiations were commenced between Mr. Stearns and myself, with regard to the present contract, and for some time after. I did not then believe that movement would be successful, but at the time when the contract was finally executed, from what had occurred in the mean time in the further purchases of stock by Mr. Johnson and his associates, I had fears that the movement might prove successful, though I hoped it would not. The contract was made and executed with reference to the possible contingency of such a

result in so far only as the suggestions which Mr. Stearns made with regard to the probable injurious results of such a contingency to the interests of the Northern and upper roads and to the public, which I have previously stated, referred to such a result.

Q. 121. Did you not use this language before the special Railroad Committee, last June, when inquired of as to whether you understood that the old Board was to go out of office when the contract of April 29, 1870, was made; viz., "I understood that the old Board was to go out of office when I made this contract. I feared it. I made it with reference to the results that I thought might follow. This was the very consideration that Mr. Stearns urged upon me."?

A. I do not think I testified in that form.. I think my testimony was that I understood that in the arrangement proposed by Mr. Johnson to Mr. Stearns, if carried into effect, the old Board were to be rubbed out. I also stated that at the time this contract was made, I had fears that this movement against the old Board might be successful, but I hoped it would not; that I made the contract with some reference to the results that might follow, because the suggestions that Mr. Stearns made, when he introduced the subject of some contract, had reference to such a contingency. I do not undertake to give my precise language then, but the substance of my meaning.

Q. 122. Was your testimony before the Legislative Committee last June stenographically reported, and has the firm of which you are a member, viz., of Minot, Tappan & Mugridge, that report, or a copy thereof, or is it where they can have access to the same? if so, will you produce it, or cause it to be produced?

(Objected to.)

A. There was such a report. I have not it in my charge, but Mr. Tappan or Mr. Mugridge have it or have had it recently. I will, if you desire, endeavor to get copy from it of what I testified to on the point referred to in your interrogatory 121, and will annex the same to this deposition, if you wish me to. I have not the report to produce.

Q. 123. Will you allow the defendant's counsel to read the stenographical report of all your testimony before the legislative committee, now in possession of Minot, Tappan & Mugridge, so that they may call your attention to the particular part that they have referred to in one of the last interrogatories.

A. I have not that report in my possession, nor do I know that it is now in the possession of Mr. Tappan or Mr. Mugridge; but if you desire, I will copy all the testimony whatever given by me in any way relating to the point mentioned in your interrogatory 121, and annex the same to this deposition as soon as I am able to get that report.

(Objected to as not responsive to the question.)

[10.40 P. M. adjourned to 9 A. M., Aug. 19.] *Direct examination resumed.*

Q. 124. State what you did testify before the committee of the Legislature as to your having regard for the interests of the stockholders of the Concord Railroad in making the contract of April 29.

(Objected to because the stenographic report shows what he testified to there, and the counsel for plaintiff has declined to allow defendant counsel to examine that report, and for the further reason that it is incompetent.)

A. I recollect that I then stated that I made the contract because I believed it to be for the interests of those stockholders, though this may not be the precise form of my language at that time.

Q. 125. State what you know about the sum of \$31,862.80 (mentioned in 111 cross-interrogatory) in the annual report of 1866, as balance of the net earnings of the previous year to be carried to the contingent fund?

A. The account in that report, from which that balance is made to appear, is not a full nor correct exhibit of the operations of the road during the previous year; a correct statement would have shown, that instead of such a balance there was actually a deficiency, and accordingly a large sum, over \$25,000, was afterward deducted from the contingent fund in the accounts of the road to rectify in part the error. The facts on this subject are stated in the annual report for the year ending March 31, 1867, a copy of which is herewith presented, to be annexed to this deposition, marked "F."

Q. 126. State what reductions on the rates of the local business of the Concord Railroad and its branches, were made between the commencement of the year 1866 and May 24th last; when and to what extent?

A. Various reductions were made from time to time during that period. I have not the means at hand to state the times and amounts of those several reductions. I can only say that the general ratio of reduction of fares for passengers will be indicated by the reductions on the fares between Concord and Boston. The fare at the commencement of the fiscal year 1866-7, from Concord to Boston, was \$2.75; at the time of the last annual meeting, including the reduction then recently made, it was \$2. The reductions, as a general thing, were made on a uniform rate per cent applied to the previously existing fares, thus reducing the fares between the different stations *pro rata*. The reductions on tariffs for freights have been less, say about ten or twelve per cent.

Q. 127. State whether or not any such reductions as you mentioned to Mr. Stearns, when the negotiations were going on

about the contract, as probable to be made, actually were made? if so, when did they take effect?

A. They were made both on fares and freights. They took effect at different times, I think, but both in April or May last.

Q. 128. What were your calculations as to the probable effect of those reductions, and would they or not affect the accounts of the past year?

(Objected to.)

A. I made calculations for the purpose of submitting to the directors when they should be called upon to act with regard to voting the reductions; those calculations were, compared and examined by me and Mr. Kendrick, the Superintendent, together. The calculations were, that the reductions on the same amount of local business on the road for the year then commenced, as had been during the previous year, would amount to between \$22,500 and \$25,000; those reductions would not affect the accounts of the past fiscal year of the road which ended March 31, 1870.

Q. 129. What were your reasons for refusing to make the reductions on the business of the upper roads desired by Mr. Stearns and Mr. Lyon?

A. The amount of the reductions desired by them on their business over the Concord Road was estimated by me as probably amounting to \$20,000 or over, per year, in the aggregate. I declined the reductions because, if they were made in addition to the reductions made on the local business of the road, the net earnings would not be sufficient to pay ten per cent annual dividends to the Concord stockholders, as I feared.

Q. 130. How much stock did you own in the Concord Road at the time of making the contract of April 29? and how much did Richard H. Messer own, if you know?

A. I owned over two hundred and fifty shares. With the exception of the purchases I had then lately made, as I have before testified, I had owned this stock for a considerable time,—that is, one hundred and fifty shares or more—for some years. Mr. Messer at that time owned two hundred shares, I think, or more; I can't state the particulars.

Cross-Examination Resumed.

Q. 131. Were not the reductions in fares and freights, which you say were made during the period of the four years in which you have been connected with the road, made in consequence of the annual increase of business over the road?

A. They were made on the principle that as from time to time the net receipts of the road applicable to the payment of dividends appeared to be more than sufficient to pay ten per cent annually, with reasonable allowances for contingencies, reductions should be made to reduce the charges to the public

accordingly Of course, therefore, the more business, proportionally the more receipts.

Q. 132. Has not the Concord Road, in fact, a large surplus which has not and does not appear in the report as such surplus?

A. I refer to the last annual report, which is annexed to this deposition, for the facts on that point. The sums referred to in that report on this point have always been in the accounts in the office of the Superintendent, and the reason why they have not been transferred to the accounts in the office of the Treasurer, are suggested in the same report. The greater portion of the sum of \$48,554.97, mentioned in that report, has arisen from matters connected with the Manchester and North Weare Road, and embrace accounts which extend back to years prior to the time I became connected with the Concord Road. The particulars I can not now state, but they appear in the accounts of the Concord Railroad in the offices of its Superintendent and Treasurer.

Q. 133. Did not Richard H. Messer, after he learned that other parties were buying stock, purchase a considerable number of shares at \$85 per share? Also, did he not solicit proxies all over New-England, and obtain a large number, which were voted for the old Board of Directors?

A. He told me that he made purchases of some shares; but not to a great amount, I think. My impression is that he has owned the number of shares I have stated above for several years. I know that he had some proxies, which I have no doubt were represented for the old Board of Directors; but I can not state farther in answer to the inquiry? I know nothing with regard to the prices he paid for what stock he bought, as above stated.

Q. 134. State about how many proxies he had, as nearly as you can?

A. I can not state with any definiteness.

Q. 135. Will you annex to this deposition a copy of the contract between the Nashua & Lowell and Lowell & Boston roads, to which you referred, as you say, when you made the contract of April 29, 1870, if the copy thereof can be obtained and this do you?

A. I w, you desire.

J. MINOT.

A.

 This agreement, made this ninth day of May, 1870,
 by and between the Concord Railroad Corporation as
 the first party, and the Northern Railroad as the
 second party,

WITNESSETH—That it has been and is mutually agreed, by
 and between said parties, that any and all sums of money which

U. S. Rev.
 10 cts.

shall become due and payable on account of a certain bond of said first party to George B. Jewett and wife, dated December 22, 1857, according to the condition of said bond, during the time for which the joint management of the roads of the parties hereto shall actually continue and be in operation as provided in the contract between said parties relative thereto, of April 20, 1870, shall be paid by said joint management from its receipts, and be included in the accounts of said management the same as if said bond were the liability of both parties to said management and arising from the operations thereof.

And also that any and all sums of money which, by the terms of a certain agreement between the parties hereto, dated January 1st, 1864, would become due and payable from said first party to said second party, during the time for which the joint management aforesaid shall actually continue and be in operation, as above mentioned, shall be remitted and fully discharged by said second party to said first party, without any payment thereof, — the intent and meaning hereof being to fully discharge said first party from all payments which, by the terms of the agreement aforesaid, would fall due during the time above mentioned.

In witness whereof, said parties have hereunto set their names and seals, by their agents thereto duly authorized.

Northern Railroad (N. H.), by

URIEL CROCKER, Treas. N. R.



The Concord Railroad Corporation, by

J. MINOT, Pres't.



B.

Contract—Concord, Manchester & Lawrence Railroad—Dec. 27, 1860.

This indenture, made this 27th day of December, 1860, between the Concord Railroad Corporation of the one part, and the Manchester & Lawrence Railroad of the other part, both being corporations duly established within and by the State of New-Hampshire,

Witnesseth, That whereas the Concord Railroad and the Manchester & Lawrence Railroad have been, by the action of the Railroad Commissioners of New-Hampshire, so laid out in connection with each other as to require the joint construction and occupation of depots and connecting tracks for passengers and freight at Manchester, thereby rendering necessary the same employees for the transactions of a large portion of the business of said roads; and said roads are otherwise largely

connected in joint business, so that they may be operated in connection with each other by the common use of the locomotives and cars of the roads, and one machine-shop for repairs, to the great saving of expense, and efficiency and safety in the running of trains, for the mutual benefit of the roads, and the better security of their respective investments, as well as for the convenience and interests of the public,—Now, therefore, for the promotion of these and other objects of mutual advantage to all parties concerned, said parties hereby covenant and agree to enter into a business contract and terms of connection to and with each other, agreeably to the several stipulations and conditions hereinafter mentioned.

ARTICLE 1. The Concord Road, and the Manchester & Lawrence Road, with the Methuen Branch connected with the same, shall be run and operated by the Concord Road, as agent of both Roads, under the name of the Concord, Manchester & Lawrence Road, in such manner and with such number of trains over either road as it shall deem most for the common interest and advantage of both roads and the public.

ARTICLE 2. The expenses of running and operating said roads shall include taxes, insurance, supervision by directors and officers, and the necessary repairs of depots, road-bed, fences, super-structure, bridges, furniture and fixtures of said roads.

ARTICLE 3. The locomotives, cars and furniture of each road, together with the stationary engines and tools in the machine shop and for road repairs, which were inventoried and appraised under the contract entered into between the roads, commencing December 1st, 1856, at \$215,205.15 belonging to the Concord Road, and at \$107,896.80 belonging to the Manchester & Lawrence Road, and which have been used in the joint operation of the roads to the present time, shall be run and operated by the Concord Road for the joint benefit of both roads, and shall be kept in the same comparative repair and valuation as at the time of such appraisal, and shall be returned to each road in the same relative proportions at the close of this contract; Provided, if any additions shall have been made thereto above said valuation during the former contract and the continuance of this contract, such addition shall belong to the roads severally in proportion to their capital stock, and shall be returned to each road in such proportion.

ARTICLE 4. The stock in the machine shop, and wood and oil on hand, belonging to each road, which were inventoried and appraised at the commencement of the former contract between the roads above named, at \$76,714.52 belonging to the Concord Road, and at \$39,696.20 belonging to the Manchester & Lawrence Road, and were charged to the current joint expense account, and accredited to each road agreeably to the por-

tion furnished by each and which have remained in the common stock of the road to the present time, shall continue to be used in the joint operation of the road, and shall be returned by the Concord Road at the close of this contract in the ratio of the several sums aforesaid, and any surplus of stock and wood and oil on hand at the close of this contract beyond such amount, shall be apportioned to each road in proportion to its capital stock. And so far as the surplus fund of either road shall at any time be invested in stock on hand for the common use of the road beyond its proportion according to its capital stock, interest thereon shall be allowed to such road for such excess.

ARTICLE 5. Any lands or buildings belonging to either of said roads, which are not properly a part of their depot grounds or right of way, and are not used or necessary for the business of said roads, may be retained by the road to which the same belongs, or may be disposed of by said road for its own separate use and benefit.

ARTICLE 6. The Superintendent of the Concord Road shall make out, at the close of each month, a statement of the income and expenses of the roads, and furnish the same to the Board of Directors of each road, and such other information as may be required; and it shall be the duty of the Superintendent to attend the several meetings of each Board of Directors for this purpose, and two fifths part of the net receipts of the joint business at the close of each month's account, after reserving such sum as may be deemed necessary to cover the contingencies, and any liabilities and indebtedness of the joint roads, shall be paid over to the Treasurer of the Manchester & Lawrence Road, and the accountable receipt of the Treasurer be taken therefor, to abide the settlement and adjustment required to be made at the close of each six months, as is provided in the ensuing article.

ARTICLE 7. The capital stock of the Concord Road is established at fifteen hundred thousand dollars; of the Manchester & Lawrence Road at ten hundred thousand dollars, and the Methuen Branch at one hundred and ten thousand dollars, amounting in all to twenty-six hundred and ten thousand dollars; and the net earnings of said roads and branches, above all expenses, and the amount necessary to be reserved for depreciation, shall be semi-annually, on the 31st of March and the 30th of September in each year, set apart and paid to each road and said branch in proportion to their capital stock, deducting from the portion of the Manchester and Lawrence Road any amount previously paid to said road in monthly receipts; and, in case said monthly payments shall exceed the proportion due the Manchester & Lawrence Road at any of said semi-annual payments, then said road shall pay back the excess thereof into the common accounts of the roads for the purpose of making the proper ap-

portionment aforesaid; and the several sums thus apportioned and paid out to said several roads and branch, shall be appropriated by them as the Directors and stockholders thereof shall order.

ARTICLE 8. All money paid to the Manchester & Lawrence Road on the monthly receipts of their Treasurer, and all money apportioned and paid over semi-annually to the several roads as their proportion of the net income, shall be at the separate risk of each of said roads respectively, after such payment.

ARTICLE 9. In case a vacancy shall occur in the office of Superintendent of the Concord Road, the appointment to fill such vacancy shall be made with the concurrence of the Directors of the Manchester and Lawrence Road; and if the Directors of the road can not agree, no appointment shall be made except with the approbation of the arbitrators named in Article 14.

ARTICLE 10. The salary of the President of the Manchester & Lawrence Road, and such sums as may be necessary in proportion to the service rendered, of the Clerk, Treasurer and Directors of said road, shall be paid as the same may accrue, from the joint income of the roads.

ARTICLE 11. The depots, road-bed, bridges, superstructure and fixtures of each road shall be kept, as near as may be, in like relative repair from their present state and condition, and all casualties and damages to the same on each line shall be at the common risk, and charged in the current accounts of the roads.

ARTICLE 12. In addition to the partition of earnings to the Concord Road as named in article 6, the following claims and allowances shall be further made to said road, as part and parcel of the conditions of this contract, agreeably to the award of Ichabod Goodwin, Thomas Thatcher and Robert Hale, referees mutually appointed to report and award on such terms of contract as should be just and equitable between the Concord and Manchester & Lawrence roads; viz., the Concord Road shall be entitled to the ownership of all additions and betterments made from the common funds of the roads, during the contract at present existing between them, in the construction and enlargement of the new passenger depot at Concord, in the construction of water-works, and additions to the engine-house and fixtures connected therewith, at Concord, and in the new bridge rebuilt over the Merrimack river at Hooksett, for a double track instead of the former single track bridge; and it is further provided that the bridge over the Merrimack river at Goff's Falls, which must soon be rebuilt, shall be reconstructed from the common earnings of the roads under this contract, and that the ownership of said bridge, together with any increased valuation arising from its reconstruction, and any betterments in preparing it for a second track, shall belong to the Concord Road; it being understood that all such fixtures, improvements and bet-

terments are to be used for the common benefit and advantage of both roads during the full term of this contract. It is further agreed that any unsettled claims between the Concord Road and the Manchester & Lawrence Road as to land furnished beyond the proportion of either road for the passenger and freight depots at Manchester, and the necessary connecting tracks to the same, are hereby adjusted and liquidated between said roads, and proper conveyances shall be drawn and executed by either road to the other, of the respective interest of each in common with the other in the land on which said depots are situated, together with the tracks necessarily connected therewith, for the use of the same, in proportion to the expense severally incurred by said roads in the construction of said passenger and freight depots and tracks.

It is also agreed that the wood lot at Groton, in New-Hampshire, and the telegraph line over the Manchester & Lawrence Road, which have heretofore been charged into the common account of property and stock of the roads, shall be divided and apportioned to the roads so that said wood lot shall be the property of the Concord Road, and the telegraph line the property of the Manchester & Lawrence Road, and they shall be severally charged to each road at their cost, so far as paid for from the common funds of the roads.

ARTICLE 18. The contract now existing between the roads by which they share in proportion to their capital stock in the contract for running the Concord & Portsmouth Road, shall continue during the remainder of such contract, or a renewal of the same, or any new contract made with said road or any branch road run in connection with it or with said Concord Road.


ARTICLE 14. This indenture shall be construed as a business contract solely, and not as a lease of one road to the other or as a union of their corporate powers or privileges; each party retaining to itself all of its chartered right and liabilities, and the power to sue and the liability to be sued in its own separate name and capacity in the same manner and to the same extent as heretofore, excepting that in so far as between these parties the rights and liabilities of one with the other shall be settled and determined by this agreement.


ARTICLE 15. Any controversies arising at any time as to the true intent and meaning of this contract or its proper and just fulfillment, may be submitted, at the request of either of said roads, to the decision of Ichabod Goodwin, of Portsmouth, New-Hampshire, Thomas Thatcher, of Boston, and Robert Hale, of Roxbury, Massachusetts, the report and order thereon of a majority of whom shall be final. If a vacancy shall occur in said Board of Arbitrators, some other person or persons shall be appointed by the Directors of said road, by mutual agreement,

or in case they are unable to agree, the remaining arbitrator or arbitrators shall make such appointment.

ARTICLE 16. This contract shall take effect on the first day of December, 1861, and shall continue in force for and during twenty years from that date, unless the same shall be annulled by a vote at the first meeting of the stockholders of either of said roads, holden after the date of this contract: it being understood that until this contract takes effect the existing contract between the roads shall continue in full force, and that nothing in this contract shall at any time overrule or change any of the provisions in said former contract, except as so far as is herein especially provided.

In witness of which, said several covenants and agreements, the Concord Railroad Corporation and the Manchester & Lawrence Railroad, by their agents duly authorized, have hereunto interchangeably affixed their names and seals of said corporations, this 27th day of December, 1860.

N. G. UPHAM, E. J. M. HALE, N. G. WHITE, ASA FOWLER, GEO. H. DODGE,	}	Committee of the Manchester & Lawrence Railroad.	}  L. S. }
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N. G. UPHAM, ISAAC SPALDING, JOSIAH STICKNEY, C. H. PEASLEE,	}	Committee of the Concord Road.	}  L. S. }
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The Concord Railroad Corporation and the Manchester & Lawrence Railroad hereby agree that the within contract, with the several terms and conditions therein specified, shall be extended and continue in force from and after the termination named therein, to the first day of December, A. D. nineteen hundred and eleven, unless the stockholders of said corporations, or either of them, should refuse their consent to the same at their next meeting. In witness of which agreement the said Concord Railroad Corporation and the Manchester & Lawrence Road, by their committees duly authorized, have hereunto interchangeably affixed the names and seals of said corporations this fifteenth day of March, 1865.

MANCHESTER & LAWRENCE RAILROAD

BY

N. G. UPHAM, E. J. M. HALE, E. A. STRAW, ASA FOWLER,	}	Committee of the Manchester & Lawrence Road.	}  L. S. }
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CONCORD RAILROAD CORPORATION

BY



N. G. UPHAM,
ISAAC SPALDING,
JOSIAH STICKNEY,
C. H. PEASLEE,

} Committee
of the
Concord
Road.



C.

DIRECTORS' MEETING, }
May 9, 1870.

At a meeting of the Board of Directors of the Northern Railroad, held at the office of the Treasurer, in Boston, on the ninth day of May, 1870, at 11 o'clock A. M., agreeably to notice thereof by the President:

Present—Messrs. Stearns, Daniell, Minot and Crocker.

Voted, That Onslow Stearns be and hereby is appointed agent, to have charge and direction of the care, management and operation of the roads, and of the business thereon, and of the joint management contemplated and provided for in the agreement of April 29th, 1870, between this Corporation and the Concord Railroad Corporation relative thereto.

Voted, That said agent have full power and authority to employ all such officers, agents and servants; to make all such purchases, sales and other contracts; and generally to do all such other acts and things as he may from time to time think proper and for the interests of the parties concerned, provided the same shall be in accordance with the terms and included within the provisions of the aforesaid agreement of April 29th, 1870.

Voted, That the President be authorized for and on behalf of this Corporation to agree with the Concord Railroad Corporation on persons to make the inventories and appraisals provided for in the aforesaid agreement with that Corporation, and to cause said inventories and appraisals to be made accordingly.

Voted, That the President be authorized, for and in behalf of this Corporation, to institute such proceedings at law or in equity, and to take such other measures as he may from time to time hereafter think proper to protect any rights and interests of this Corporation.

Voted, That the agreement of this date between this Corporation and the Concord Railroad Corporation, now presented to this Board, be approved, and that the Treasurer be authorized to execute the same on behalf of this Corporation.

Voted, To adjourn *sine die*.

WM. L. FOSTER, *Clerk*.

I, ONSLOW STEARNS, of Concord, in the County of Merrimack and State of New-Hampshire, depose and say as follows, in answer to the following interrogatories :

Interrogatories proposed by Hon. Mason W. Tappan, counsel for plaintiff.

Q. 1. How long have you been engaged in railroad business, and how long have you been connected with the Northern Road, and in what capacity ?

A. I have been engaged in superintending the operations of railroads about thirty-two years—some years prior to that in construction of railroads. I have been connected with the Northern Road since 1845, first as superintendent of construction and operating the road, and about sixteen years as President of the road.

Q. 2. Will you please state as to the arrangements between your road and the Vermont Central and the Ogdensburg Roads for the business of those roads since 1854 ?

(Objected to.)

A. In 1854 an agreement was made between the Northern Road and some of the roads below, and also between the Vermont Central and Ogdensburg Railroads, for the business of the Vermont Central and the Ogdensburg Railroads, to continue for a period of sixty-one and one half years. This contract proved to be unsatisfactory to the Vermont Central & Ogdensburg Roads, owing to the increased cost of doing the business; they desired a new contract on more favorable terms. A new agreement was made in the early part of 1869, for twenty years from February, 1870, between all the parties forming the line known as the Vermont Central line, but was not finally executed till February, 1870, because we desired to perfect an arrangement with the lower roads for the business of the Northern Road for the same period of time.

Q. 3. What was the business arrangement, if any, between your road and the Concord Road up to the making of the contract of April 29, 1870 ? please state fully.

A. In 1864 a contract was made between the Northern and Concord Railroad, for the business of the Northern Road over it, relating back to April 1, 1862, and to continue for five years from the latter date absolutely, and thereafter till three or six months' notice given by either party.

Q. 4. What negotiations, if any, did you have with the President of the Concord Road, in 1869, with reference to a permanent contract between the Concord and Northern Road ?

(Objected to.)

A. As the contract of 1864 was liable to be terminated on short notice, I desired to make a permanent contract with the

Concord Road, and had several interviews with the President of that road for that purpose during the year 1869.

Q. 5. Please state what your propositions to Judge Minot were, and when, or about when, did the negotiations commence, and how long did they continue? give the particulars as full as you are able.

(Objected to.)

A. Soon after the arrangement with the Vermont Central Road, in the early part of 1869, I sought to make a permanent contract with the Concord Railroad, and some time in the summer of 1869 I proposed to Judge Minot to make a contract based upon the division of business similar to the one existing between the Manchester & Lawrence and Concord Railroads. It was proposed that the Boston, Concord & Montreal Railroad should be a party to the arrangement. Judge Minot declined to make an arrangement for the division of profits in the manner I proposed, but said he would make a contract by which the Concord Road stockholders should receive ten per cent dividend, stating that he believed that would be satisfactory to the stockholders and the public, as the roads could be operated cheaper and more conveniently for the public. I understood him to say that he had some interviews with the officers of the Boston, Concord & Montreal Road on that subject. I was not present at any of those interviews, and had no talk with the officers of that road upon that subject at that time. The negotiations continued more or less up to the time of making the contract of April 29, 1870, now in controversy, I suppose.

Q. 6. State whether or not the proposition of Judge Minot, as communicated to you in 1869, contemplated a joint management of the two roads, as you understood it?

(Objected to as very leading, and incompetent.)

A. This proposition, some time in the summer or fall of 1869, was substantially the same as that of the contract of April 29, 1870.

Q. 7. Now will you please state the first knowledge you had of the movement to change the old Board of Directors of the Concord Road? I mean the board of which Judge Minot was the head.

A. I had no knowledge of any such movement or plan till some time in February, 1870. Mr. Nathaniel White told me that such a movement was being made, several different times, and proposed that some arrangement should be made to continue the present Board of Directors of the Concord Road in office, saying that he believed that it was for the interests of the stockholders and the public that they should be continued in the board. He proposed a meeting of parties interested, at General Stark's rooms in Boston, to see if some

arrangement could not be made, either by the purchase of stock, or otherwise, to keep them in office. The place he mentioned, was fixed upon because most of the persons referred to were to be there upon other business at that time.

[Adjourned 10 minutes of 1, to 2 P. M.]

Q. 8. What was the result of this meeting?

A. After considerable discussion it was decided to do nothing, as General Stark, as well as Judge Minot, declined to have any thing to do with it.

Q. 9. Will you state whether or not, about this time, you had an interview with James W. Johnson? and if so, when was it, as near as you recollect, and what took place?

(Objected to.)

A. In the fore part of March, I think it was, Mr. Johnson called on me, at my office in the Old Colony depot, and represented that the ring, as he called it, had got control of stock enough of the Concord Railroad, as he believed, to control it. He said they intended to purchase, to the extent of 15,001 shares, if necessary to do so, to control it.

Q. 10. What did Mr. Johnson then say, if any thing, as to the means which this combination had to carry out their purposes to control the Concord Road?

(Objected to as incompetent.)

A. Mr. Johnson assured me that they had ample means within their control to purchase stock enough to control it, and that they would do so if they had to pay up to \$100 per share.

Q. 11. What knowledge had you that Mr. Johnson would call upon you at this time?

A. I had no knowledge, did not know that he was coming.

Q. 12. Did Mr. Johnson say any thing as to whom his associates were, and what their object was in obtaining the control of the Concord road? state what he said, if any thing, as to the cost of the road, the payment of back dividends, the value of the road, and the purpose of making money, state fully.

(Objected to as suggestive, and otherwise incompetent.)

A. Mr. Johnson told me who his associates were, and who were to be the directors of the road, in part; said they had not fully decided upon the board; said their object was to make money; he wanted to be a director himself, and their object was to make money. They had got a good thing. He said that Hon. Isaac Spalding had calculated the dividends that had been paid to the stockholders, and found that there remained due, calculating the rate of dividends at 10 per cent, from the first payment of installments upon the stock, with interest upon the amount paid, less than 10 per cent, there would remain due the stockholders, 19½ per cent, which he

thought it right that the stockholders should receive. He said the road would cost \$3,000,000 to build at this time, and that the public ought to be willing to pay 10 per cent upon that cost.

Q. 13. What proposition, if any, did he make to you at this time, and what was your answer?

A. Mr. Johnson proposed that a contract should be made between the Northern and Concord railroads, by which the Concord Road should be operated by the Northern Road, and said that by working the two roads together, a saving of from \$20,000 to \$30,000, could be made per annum, and offered the road to us for a bonus of \$100,000, we to take a portion of the stock which the ring had purchased, at \$85 per share. I told him that I would consider this proposition; but that I could do nothing without the action of the Board of Directors of the Northern Road.

Q. 14. Please state whether Mr. Johnson had any other interviews with you on the subject? if so, how did they come about?

A. He did; he called to see me several times, either at the old Colony Depot, the United States Hotel, or the Treasurer's office of the Northern Railroad, in Boston. He came there to see me on his own account; after he made the proposition I was to see the Directors of the Northern Road, and he was to meet me to ascertain what the result was. He came shortly after, seemed to express considerable anxiety to have an arrangement of the kind as soon as could be.

Q. 15. Whether or not you laid the subject-matter of Mr. Johnson's proposition before your Directors, and what action, if any, was taken?

A. I stated to the Directors, or some of them, unofficially, as there was no legal meeting of the Board, Mr. Johnson's proposition, which they declined to consider till I had represented to them the condition of things that would be likely to exist in case no arrangement was made.

Q. 16. What reasons arising from your knowledge of the business and business connections of the Northern and Concord roads induced you to favor the acceptance of Mr. Johnson's proposition? and what representations did you lay before your Board of Directors concerning it?

(Objected to.)

A. I represented to the Board that if we did not accept the propositions of Mr. Johnson, as we had no permanent contract with the Concord Road, if the ring came into power we should be subject to pay this larger sum of \$300,000 dividends upon the increased cost of the stock, which the ring were paying to secure the control of the road, and upon the \$3,000,000 of capital which they said the road was worth,

for if they had the control of the road they could put us in a tight place, so as to compel this result, for the business of the Concord Road would support it, and they could combine with the lower roads in order to make us come to their terms. The business of the Vermont Central and Ogdensburgh roads, amounting to \$800,000 or \$900,000 per annum, including car service between White River Junction and Boston, was of much importance to us, which they could cause to pass down the valley of the Connecticut, if it was necessary to effect their object. I represented to the Board also the commanding position of the Concord Road, if in the hands of a party of speculators, as Mr. Johnson represented the ring to be, pointing out to them the several roads that centered in it at Concord, and its several branches from Manchester in different directions; also stating that the business of the Northern Road is not sufficient to pay operating expenses and a dividend upon the capital stock, and it was therefore necessary for us to have the business coming from the Vermont Central Road.

Q. 17. Whether or not you were influenced by the fact that it was in the power of Mr. Johnson and his associates to sell out to other parties to your detriment? and what, if any thing, did Johnson say to you with reference to selling to other parties?

(Objected to as outrageously leading and incompetent.)

A. Mr. Johnson told me that other parties wanted to buy if we did n't make arrangements, and I believed that if all the roads were combined, between Boston and Concord, the interests of the Northern Road would be likely to suffer materially. I was influenced by his statement to me that other parties wanted to buy.

Q. 18. If the purposes of the ring were carried out as represented to you by Johnson, out of whom would this increased amount come? in other words, who would be compelled to pay it, and what did you say to your Directors in regard to this?

(Objected to as indirectly assuming what the witness has not said, and as incompetent.)

A. I believed it would come out of the people north of Concord, and the interests which I represented of the Northern Road and its branches in connection with them, and out of the other roads centering in Concord from the north. I represented that it would likely be a great injury to the Northern Road, and they had better therefore accept Mr. Johnson's terms; that the \$100,000 bonus, and the amount estimated as the cost of the stock to be taken above its actual value, amounting to about \$50,000 or \$60,000, or in all about \$150,000 or \$160,000, would be equal to only about \$8,000 or \$9,000 per year, including interest, on the contract for twenty years,

which amount could be saved in working the two roads together, and that was one of the reasons which I presented to the Board for making the contract.

Q. 19. How long was the contract between the Northern and Concord railroads, as proposed by Mr. Johnson, to continue?

(Objected to.)

A. For twenty years, the same as the contract made with the Vermont Central Road.

Q. 20. Whether or not Mr. Johnson's proposition was ever reduced to writing, and if so, when?

A. It was, at one of the interviews at the Old Colony depot, some time in March; I do n't recollect the date. The Directors of the Northern Road were not willing to agree to any arrangement until they saw it in writing.

Q. 21. Please state whether you made any memorandum or memoranda of the facts stated to you by Mr. Johnson at these interviews, and if so, have you those memoranda now? and will you produce them, that copies may be annexed to this deposition?

A. I made minutes of what he stated at several of those interviews, for the purpose of knowing what strength he had, who the parties were composing the ring, and who were to be the Directors, and who held the stock that was represented by the ring. I have and will produce them, that copies may be annexed to this deposition. They are annexed, marked No. 1, No. 2, No. 3 and No. 4, respectively.

Q. 22. Please state the substance of conversation by Mr. Johnson at his second interview with you?

A. The substance of conversation at second interview was similar to that at the first; it is minuted on paper 2. He made some additional statements. He stated to me that the ring was to consist of ten—nine fixed upon, the tenth to be either John Tallant, Natt Head, or James R. Hill. That the Board was to consist of Johnson, Pearson, Smyth, Hill, Edward Spalding and Isaac Spalding, and either Tallant, Head or Hill—according as one or the other of them might take stock; that Isaac Spalding was to be made President, and was to resign and go out of the Board, and John Spalding (I do n't recollect his middle name) was to take his place in the Board, and that Smyth was to be President of the Board after Spalding resigned. That Currier was to be Treasurer, and Marshall to be Clerk. He said that he himself (Johnson) had seven hundred shares, at a cost of \$70 per share, and five hundred shares, at a cost of \$85 per share; that Smyth had one thousand shares, at a cost of \$85 per share; Pearson one thousand shares, at a cost of \$85 per share, and another person, whose name he could not give me, about five hundred shares, at

a cost of \$85 per share; Clough eleven hundred and twenty-two shares, he did n't give me any cost for that, saying that it was from \$30 or \$40 per share up to a considerably higher sum. Edward Spalding, in his bank, five hundred shares—Spaldings own one thousand shares, ditto control one thousand shares; Anson Marshall two hundred shares—making 7922 shares. He said that he should want us, the Northern Road, to take from three thousand to four thousand shares, at \$85 per share; that he did not buy any stock from friends, but bought all from those who were friends of the old Board; that he had bought several hundred shares for persons whose stock he could have; that Head was willing to take one thousand shares, and had \$30,000 now on deposit.

Q. 23. What was your purpose in making these memoranda, and when were they made?

(Objected to.)

A. The object was to ascertain the strength of Mr. Johnson and his associates, whether they could carry out the agreements that he proposed, and whether they would be likely to get control of the road. They were made at his interviews with me at the Old Colony depot.

Q. 24. What, if any thing, did Mr. Johnson say to you further, as to the amount of stock controlled by the ring, and their purpose to buy more, if necessary? how much, and at what price?

A. He told me they had the control of 10,000 shares; if it was necessary, they should purchase up to 15,001 shares, and should pay as high as \$100 per share, if it was necessary to secure the control of the road.

Q. 25. Can you tell about what time these interviews with Johnson took place?

A. I did n't make any note of the date; but the first interview was prior to March 11, 1870, and the memorandum of agreement was reduced to writing on the 25th of March, 1870. I think they were all within the month of March; there were one or two interviews after the 25th of March.

Q. 26. What, if any thing, did Mr. Johnson say to you in the course of these negotiations, about Mr. George Clough and the conductor suits, so-called?

A. Mr. Johnson said he was the friend of Mr. Clough, and that he had tried, some years ago, with Mr. Clough and others, to change the directors of the Concord Road, for the purpose of being a director in the Concord Road himself, and to have the suits against Clough discontinued. That they succeeded in changing the directors in part; but that he did not get into the board, and that the suits against Clough were not discontinued. That in this movement his object was to get into the board, and to have those suits abandoned against Clough, and

that he could not make any arrangement with the Northern Road, unless it was provided that those suits or suit should be settled, or entered "neither party."

Q. 27. What was the final decision between you as to these matters, and who, if any one, was present at the time this was arrived at?

A. The question of the conductor suits, and the question as to the Board of Directors, who should be directors, in the Concord Road, was the most difficult matter to arrange in regard to the contract. Mr. Minot, who was one of the directors of the Northern Road, would not consent to any arrangement being made in regard to the conductor suits, so far as relates to their being discharged, and as Mr. Johnson made that a point in the agreement, Col. Tappan, who was the counsel of Mr. Clough, was sent for to see if he could draw up an agreement that would meet the views of both parties, and was present at one or two interviews with Mr. Johnson; this is the agreement that was drawn up at that time, (showing it) marked "No. 5," the memorandum upon it in pencil was not made by me at the time the agreement was drawn up; but after it. The agreement is in Col. Tappan's hand-writing. The pencil mark is as follows: "Mr. Johnson is to take care of 4000 shares of the above 7750 shares, and so stated in presence of M. W. Tappan; but desires his proposition to be for the 7750 shares for private considerations. Mr. Johnson made this proposition March 25th, 1870, and it was assented to by Judge Minot and O. Stearns."

Q. 28. Will you produce "Paper 5," that a copy may be annexed?

(Defendant objects to the annexation of a copy of said paper, but desires the original to be annexed.)

A. It is produced, and a copy is hereto annexed, marked "No. 5."

Q. 29. Will you state what the understanding between you and Mr. Johnson was, with regard to the items of this paper (No. 5).

(Objected to, as the paper is the best evidence of its contents.)

A. The understanding was that a contract was to be made between the Northern and Concord roads; that they were to pay the Concord Road stockholders ten per cent per annum, for the use of the road; that the members of the ring were to use their influence, and the stock they held, in favor of such a contract, and that such a board should be elected as might be satisfactory to the Northern Railroad.

(Adjourned at 5:30 to 7 o'clock P. M.)

Q. 30. What influence do you refer to, and where was it to be used?

(Objected to.)

A. I refer to the influence of the members of the ring; they were to use their influence in getting the contract approved by the Legislature.

Q. 31. What was the understanding and agreement between you and Mr. Johnson with reference to a contract, and what were its terms?

(Objected to.)

A. The understanding was that the contract was to be made between the Northern and Concord road. The Northern Road was to pay the Concord Road ten per cent per annum for the use of its road; the members of the ring were to use their influence before the Legislature and elsewhere, and the stock they held in favor of such a contract, and that such a board should be elected as might be satisfactory to the Northern Railroad. Mr. Johnson said that he could control the matter.

Q. 32. What, if any thing, did Mr. Johnson tell you why the arrangement entered into between you and him was not carried out?

(Objected to.)

A. He said that it was in consequence of our requiring the contract to be completed before the \$100,000 was paid. He said that he supposed he could control seven members of the ring, which was the number necessary to carry any arrangement of that kind, but Mr. Clough, whom he supposed would go with him, declined to do so, and so the negotiations fell through.

Q. 33. If any other members of the ring were present at any of these interviews with Mr. Johnson, please state who they were.

(Objected to.)

A. Mr. William R. Spalding came with him two or three times; he was the only one, so far as I recollect.

Q. 34. What was said in the course of these negotiations, if any thing, by Mr. Johnson, about having funds in the bank at Manchester and the bank at Concord?

(Objected to upon the ground that it asks for detached portions of conversation, without asking for the whole, and as otherwise incompetent.)

A. When concluding the agreement with Mr. Johnson, I told him it would require a large amount of money to pay the bonus and for the stock we were to take, and it would require some time for us to arrange for it. Mr. Johnson said they had arrangements for the money at banks in Manchester and Concord, to carry the stocks, and that they could accommodate us with \$50,000 at one bank in Manchester, and \$50,000 at another bank, till the first of June, at six per cent, and that we could have \$30,000 at his bank in Concord, till the first of June, at

seven per cent. He said they had arranged for it to carry the stock up to that time.

Q. 35. Will you please state now how you finally came to make the contract of April 29, 1870? how was the subject introduced and what was said and done?

A. The negotiations with Mr. Johnson having ended, I saw Judge Minot, President of the Concord Road, who was also a Director of the Northern Road, and was acquainted with all the negotiations between Mr. Johnson and myself. I proposed to him to make a similar contract to that we had been negotiating during the summer and fall of 1869. Judge Minot said that his Board would be willing to make such a contract which should guarantee to the stockholders of the Concord Road the legal amount of dividends. This contract that he would agree to was similar in its general basis to that proposed by Mr. Johnson, with this difference: that the one proposed by Mr. Johnson was for twenty years, and would require legislative action; the one he offered to make was for a term of five years, being a business contract, which would not require the approval of the Legislature.

Q. 36. State whether or not the contract was finally closed between you and Judge Minot? and whether or not the same was approved by your respective Boards?

A. After considerable negotiation to the details of the contract, one was drawn up and submitted to the Boards of Directors, and approved by them. That is the contract dated April 29, 1870, and the one now in controversy.

Q. 37. What were your motives and purposes in entering into this contract?

(Objected to on the ground that the motives are to be judged by the acts and the circumstances surrounding them, and as otherwise incompetent.)

A. My motives and purposes were the same that had always influenced me in desiring a contract with the Concord Railroad, to get a reduction of rates, and to protect the interests I represented, and the public we serve. I desired this all the more, now that I supposed the road might change hands, and pass into the hands of persons who wished to control it for speculative purposes; what they might do, I did not know any further than I have stated. The only motive I had was to make such a contract as I thought would protect the public and the interests I represented.

Q. 38. If any other proposition was made to you after this, coming from any party, state what it was, and how it was made to you?

A. Shortly before the annual meeting of the Concord Railroad, I think it was the Friday night before, a messenger came to my house between 11 and 12 o'clock at night, after I

had gone to bed; said he came from Mr. Johnson, and I think Mr. Clough also; said they proposed to sell out to us for \$250,000.

Q. 39. Who was the messenger, and what reply did you make to the proposition?

A. The messenger was Col. M. W. Tappan. I told him we could not increase the amount of the agreement, which Mr. Johnson had proposed at a former time. I could not consent to pay any amount that would be a charge upon the public; that the \$150,000 or \$160,000, the amount of the agreement that had been abandoned, could be saved in working the two roads together; that I was unwilling to make any agreement that would not promote the interests of both roads and the public, and therefore could not accept his proposition to pay \$250,000.

On cross-examination, deponent says as follows, in answer to the following interrogatories:

(Interrogatories proposed by Anson S. Marshall, Esq., counsel for defendant.)

Q. 40. How much stock did you own in the Northern Railroad on the 29th day of April, 1870, and how much in the Concord Railroad, on the same day?

A. One hundred shares in the Northern Road, I think, and thirty-six shares in the Concord Road.

Q. 41. Did any one else hold any stock in which you were directly or indirectly interested at that time, in either of those roads?

A. No.

Q. 42. When were you elected agent of the joint management, so called? give the date as nearly as you can.

A. I do n't recollect the date, I do n't remember it, it was some where near the time the contract was made, at a meeting of the Board.

Q. 43. Did you go into the immediate discharge of your duties as such agent, and take immediate possession of the Concord Road, and its property and equipments, as per terms of the contract of April 29, 1870?

A. Yes, as soon as the arrangements could be made to do so.

(Adjourned at 8:45 P. M. to 8:30 A. M., Aug. 23, 1870.)

[In consequence of the temporary illness of Gov. Stearns, his cross-examination was suspended at this point. It being necessary for the convenience of the printer that other depositions should be inserted here, the continuation of Gov. Stearns' testimony will be found on a subsequent page.]

I, JOSEPH B. CLARK, of Manchester, N. H., being duly sworn, depose and say as follows :

(Interrogatories by E. A. Hibbard, of counsel for the Northern Railroad.)

Q. 1. Are you a stockholder in the Concord Railroad? How many shares do you own and how many did you own at the last annual meeting?

A. I am. I own two hundred and sixteen shares. The day before the annual meeting, I think, I transferred five shares to my wife and five shares to my mother-in-law, Mrs. R. B. Peabody, as they wanted to come up to Fisherville to see their relatives on the day of the annual railroad meeting. The other shares, two hundred and six, I held in my own name at the annual meeting, and have the same number at the present time. The ten shares still stand in the names of my wife and mother-in-law, but are mine now.

Q. 2. When did you purchase your stock? State the different times and the number of shares at each time?

A. Fifteen shares I purchased some eight or ten years ago, I can not tell exactly how long. One hundred and one shares I purchased about the last of March or first of April, 1870; I can not state exactly. A hundred shares I purchased some ten or twelve days after I purchased the one hundred and one shares.

Q. 3. Of whom did you make said last two purchases, and at what prices?

A. The hundred and one shares I purchased of Gov. Smyth, and the other hundred shares I purchased of Edson Hill, I think. It may be that Mr. Johnson (James W.) sent it up to me, or William A. Tower. I sent the check for the money to William A. Tower, of Boston. I think Mr. Hill handed me the certificate for the stock. I paid from eighty-three to eighty-five dollars per share, with the dividends on; I can not tell which, I think some was eighty-three and some eighty-five.

Q. 4. What was your object in purchasing said two hundred and one shares?

A. I had several objects in view. One was, I thought it a good investment, as it would pay six per cent, free from all taxes, both State and national, and free from all care and anxiety in regard to taking care of it, and for a permanent investment I regarded it as one of the best which a man could make, should he be taken away from his family. Another inducement was that I had been informed that there was to be a change in the Board of Directors. That I thought was a good idea, for I had reason to believe that passes were issued about as freely as they were during Gov. Gilmore's administration, and a large number of persons rode over the road without paying their fare; and I, myself, have seen even the

Judges of the Supreme Court riding over the road without paying their fare. I thought it a great abuse, and doing great injustice to the stockholders and the public, and that such a state of things should cease. These were my principal reasons for purchasing it.

Q. 5. Do you mean to be understood that the persons who rode without paying their fare, did or did not have passes?

A. That I can not say—whether they had passes or not. I think they rode without paying their fare, a course which I believe ought not to be tolerated.

Q. 6. Did you purchase said two hundred and one shares for the purpose of voting on them for a new Board of Directors?

A. I did not. I purchased them with the express intention of keeping them as long as I may be able to keep any property, and I now intend to keep them as long as I may be able to.

Q. 7. Was there or not any understanding or expectation on your part, that, in the event of the election of a new Board of Directors, you were to be employed as an Attorney for the Corporation, or in any other capacity?

A. There never was a single word said about it, at the time I bought the stock, or previously. There was no such understanding or expectation.

Q. 8. Did the parties of whom you purchased said two hundred and one shares, request you to purchase it, or did you make application to them for it?

A. I made application myself in both instances for the stock.

Q. 9. If you wanted to make an investment in Concord Railroad stock, why did you not do it earlier, before it had risen in price as it did during the last winter and spring?

A. I did make an investment some eight or ten years ago, and spoke to Gov. Gilmore about it two or three times during his lifetime, and he referred me to Dupee, Beck & Sayles, of Boston, and I made application there once or twice, but they never seemed to have any on hand. So things went along, and I never seemed to come across any handily.

Q. 10. Were you or not aware at about what price Concord stock could be purchased for throughout the year 1869 and in the early part of 1870? If so, what was it?

A. It was quoted in the Journal, I think, all the way from sixty-eight to seventy-six dollars per share. I recollect once, in the first part of January, sitting in the court-room in Manchester, while the court was in session, taking up the Boston Journal and seeing it quoted at seventy-six dollars per share. I think this was the price. Mr. S. N. Bell called my attention to it at that time, making the remark that

the Concord Railroad stock is on the rise, or words to that effect.

Q. 11. Why did you not make your investment while said stock was selling at between sixty-eight and seventy-six dollars per share?

A. Because I did not care about purchasing any then. I was busily engaged in other matters, and had all that I could do in court and other ways at that time.

Q. 12. What amount of money did you have on hand at the time you purchased one hundred and one shares of Frederick Smyth?

A. It would be very difficult for me to say. I have been since last November engaged in putting up some forty tenements, and had more or less money on hand at different times; but how much I might have had on hand at that particular time I am not able to say, but the most of the money with which I purchased that stock I hired. I told Mr. Smyth, I recollect, at the time, that if nothing happened I could pay up for that hundred and one shares within a year.

Q. 13. What amount did you hire to pay for those one hundred and one shares, and of whom? and what security did you give?

A. It would be impossible for me to tell the exact amount. I hired it nearly all at the Amoskeag National Bank, where I do my bank business, and pledged Concord Railroad stock as collateral security. Gov. Smyth signed the note as surety. At that time I said to Mr. Moody Currier, I will get Gov. Smyth's name on the note. He said "you need not put yourself to that trouble." I told him that I would, for we two had signed notes for each other ever since I had my office in his block, and that we did not sign for any one else, and that I thought Gov. Smyth would as soon do it as not, or words to that effect.

Q. 14. Did Currier know what use you were to make of the money?

A. I don't know whether he did or not. I presume I may have told him, but I have no recollection on that point now.

Q. 15. On what time was said note made payable, and has it not been paid? What was the rate of interest?

A. My impression is it was payable on demand. I don't think any thing was said about the rate of interest. I have no recollection of it now. I have paid somewhere from five to six hundred dollars on what I hired there. I think the note was about seventeen thousand dollars. That is my impression.

Q. 16. How many shares of Concord stock were pledged as security?

A. Two hundred and one, I think.

Q. 17. Did you or not hire the entire amount of money which you paid for those two hundred and one shares?

A. I did very nearly. I do not think I did the entire amount. I was purchasing some lumber, brick, and other material for building, and did not keep money coming from any one source separate from the money which I was using daily, so that it would be impossible for me to state accurately how much I hired to purchase the Concord Railroad stock, but I hired nearly that amount.

Q. 18. How was said stock transferred to you by the Bank?

A. It was transferred in the same way that I have always transferred stocks as collateral security to the banks in Manchester. I indorsed my name in this case on the certificate, and it never was transferred on the books of the Concord Railroad. The blank for the name of the transferee was not filled out. I have hired money a good many times from all the banks in Manchester, and pledged bank stock and railroad stock as collateral, and never transferred it in any other way.

Q. 19. Did you receive and pay for the one hundred shares which you say you purchased about a week after you purchased the one hundred and one shares, at the same time that you received and paid for the one hundred and one?

A. I did not. I had the money at separate times, and gave two notes, both notes amounting to about seventeen thousand dollars. I meant to be understood in my previous answer that what money I hired for the purchase of Concord stock amounted in all to about seventeen thousand dollars.

Q. 20. Does said Amoskeag National Bank, so far as you know, still hold both of said notes? and has it ever since they were given?

A. I suppose so. I know nothing to the contrary. I have not paid any thing, only as I said before, five or six hundred dollars on them.

Q. 21. State whether or not Frederick Smyth took any part in procuring said loans from Mr. Currier's bank, except by signing the notes as surety?

A. In no way whatever, to my knowledge. I went alone when I engaged the money, and went to Gov. Smyth's bank when I got him to sign the notes.

Q. Were or not said two hundred and one shares pledged to said bank at the time you voted on them at the last annual meeting?

A. They were.

Q. 23. What office do you hold in any bank or banks in Manchester?

A. I am a Director in the First National Bank, and Trustee in the Merrimack River Savings Bank.

Q. 24. What knowledge had you, while stock was being purchased last winter or spring, of money being loaned by either of those last named banks to be used in purchasing Concord Railroad stock?

A. I had no knowledge of any of the money being used for such purpose, that I recollect of now. There is a committee appointed in the First National Bank, and in the Merrimack River Savings Bank, to invest the money. I am not on either of said committees.

Q. 25. Did you take any part in inducing others to purchase Concord stock a short time prior to the last annual meeting, or attend any meeting which was held to consult on that subject?

A. I do n't think I did. I have no recollection of it.
(Cross-interrogatories by Mr. Rolfe, of counsel for the defendant.)

Q. 26. State whether you had any motives in purchasing the stock of a speculative character?

A. I had not.

Q. 27. State whether you expected to realize any back dividends?

A. I never heard the subject mentioned up to that time. I did not so expect.

Q. 28. Have you since expected, or do you now expect, to realize any back dividends?

A. I do n't see any prospect of it, neither do I see any way that it can be done; so of course I can have no expectation of any such thing taking place.

Q. 29. How has it been, and how is it now, as to consolidation, as it is usually termed; have you been in favor or opposed to that scheme?

A. As a resident of Manchester, I know it would not be for my own interest to have the Concord Railroad consolidated with the connecting roads; neither do I believe it would be for the interest of the public. And looking upon the matter in this light, I can only be opposed to the measure.

Q. Did you have, in the purchase of this stock, any intention of selling it out to any party or parties for any scheme or speculation?

A. I never had any such intention.

Q. 31. Please name the Judges whom you see riding in the cars without paying fare.

A. Judge Sargent and Judge Foster.

JOSEPH B. CLARK.

Sworn to Aug. 20—S. C. E.

I, MOODY CURRIER, of Manchester, in the county of Hillsborough and State of New-Hampshire, testify and say as follows, in answer to the following interrogatories:

Q. 1. (*By counsel for the plaintiff.*) Please state what office, if any, you hold in the Concord Railroad Corporation, and how long you have held it?

A. I am Treasurer, since the day of the annual meeting.

Q. 2. State whether you have any knowledge of any gentlemen associating together, prior to the last annual meeting of the Concord Railroad Corporation, for the purpose of purchasing the stock of said corporation, to such an extent as to be able to control its action at that meeting; if so, state who the gentlemen were that thus associated together, and when and how the association was formed.

(Objected to by counsel for defendant, because the question is leading; also because it inquires about matters that are wholly immaterial in this action, and also for other reasons.)

A. There were several gentlemen, I think, proposed to act in concert, to obtain an amount of stock which would enable them, in connection with their friends, to have a controlling influence at the annual meeting. The association, so far as I know about it, was never formed at any one time, but was a matter of gradual increase. Myself, Mr. Edson Hill, of Manchester, Mr. J. W. Johnson, of Enfield, Mr. John H. Pearson, of Concord, I think, were about the first I knew that were engaged in buying stock. We did n't form any association, but agreed with Mr. Johnson to purchase in Boston some stock for us. Afterward I saw other gentlemen who proposed to take stock, or to buy stock rather—the Messrs. Spalding, of Nashua—John H. Spalding and E. H. Spalding, of Nashua, and William R. Spalding, of Lawrence. There were others in Manchester who proposed to take stock—George W. Riddle, Joseph B. Clark, Reed P. Silver, Frederick Smyth; I think there were some more at Concord—James R. Hill, Mr. Anson S. Marshall. Mr. Henry P. Rolfe was present, when we had some conversation, and I think he proposed to take some stock. I won't be positive about Mr. Rolfe. Mr. Isaac Spalding, of Nashua, was never engaged in any association as I know of, but he took, in connection with the other Spaldings, some stock. In Boston, Mr. William A. Tower, and his partner, Mr. Torrey, bought some; Mr. George Clough, of Concord, took some, Mrs. Pearson took some, and Mr. Knowlton, Mr. Pearson's partner; Mrs. Edson Hill, of Manchester, took, I think, one hundred shares. Mr. Dana Sargent took one hundred shares. That is all that I think of at present. Yes, there was Mrs. Johnson, wife of J. W. Johnson, who took some. I have stated that there was no association formed, but these persons proposed to buy in connection with each other.

Q. 3. State when the gentlemen you named first, or any of them, met together and arranged to purchase stock in concert, and how many? and who of them attended the first meeting of which you have any knowledge?

(Objected to, the same as to last interrogatory.)

A. I can n't tell the time or the date—some time in the early part of last winter; I think the first that I heard of it Mr. George Clough mentioned it to me—that there ought to be a change in the management of the road, and wished me to buy some stock, or something of that kind. The next, I think, Mr. Edson Hill mentioned it—that there were many in favor of a change in the management of the road, and suggested that he and I should buy some stock. I think the next I heard of it there were present Mr. Edson Hill, Mr. John H. Pearson, myself, and, I think, Mr. George Clough; I think Mr. J. W. Johnson was also present. The matter was talked over and we came to the conclusion to buy some stock. After thinking the matter over, I informed them that I did n't wish to buy it. Some time after that Mr. Edson Hill informed me that considerable stock had been bought of various persons and wished me to go in again—wished me to retract my refusal, and I did. I think Mr. J. W. Johnson was acting at that time for various persons, purchasing stock in Boston. Soon after that, I think, Mr. Frederick Smyth gave orders for stock, and these other persons I have mentioned came in gradually up to the day of the annual meeting. That is about all I know of any association to purchase stock.

Q. 4. Please state what reason, if any, Mr. Geo. Clough assigned why there should be a change in the management of the Concord Road.

(Objected to as before.)

A. I think he spoke of several reasons; but the principal reason was, that the Board of Directors at that time refused to carry out the agreement made with him, to release him from what was called the conductor suits. That he helped to elect the board, with the express understanding that he should be released. That when Judge Minot was elected to the board he also agreed to release Mr. Clough from the further prosecution of the suits; but they had deceived him and refused to carry out their bargain.

Q. 5. State what other reasons Mr. Clough assigned for the change?

(Objected to as before.)

A. I do n't recollect any other in particular, further than a general dislike to the management.

Q. 6. Please state whether it was then a part of the understanding of the gentlemen who associated together to purchase stock in order to control the corporation, that the ar-

rangement which Mr. Clough said had existed between the existing board and himself, in regard to the discontinuance of the conductor suits, should be carried out, and those suits discontinued?

(Objected to as before, and for the further reason that it has not appeared thus far that there was any such association as set forth in the interrogatory.)

A. I don't know of any understanding between the gentlemen themselves upon the subject; but it was often mentioned that it would be better that the suits should be settled than continued, at such an expense as they had been carried on. It was understood, or reported rather, that the expense had been very large to the corporation; that Mr. George's bill was some \$10,000, of which, \$8,500 had been paid, and that there were other counsel employed; that a gentleman in Lowell had a large bill against the corporation, and that it would be better to settle the suits, than to continue them at that cost. I believe that was about the understanding that those who were present first had of the subject.

Q. 7. Did you or not understand that if you and the gentlemen who were purchasing stock in concert with you succeeded in obtaining control of the corporation that the conductor suits were to be discontinued?

(Objected to as before.)

A. I supposed myself that there might be some amicable adjustment of the suits between the new board and the conductors; but as I was not a candidate for a position on the new board, I had no particular knowledge about it. When Governor Stearns proposed to release Mr. Clough, I advised him to go into it, as I knew of no way by which the new board could release him upon any such grounds.

Q. 8. Will you state explicitly, whether it was or was not expressly understood between the gentlemen engaged in the purchase of stock, that if they succeeded in obtaining control of the corporation Mr. George Clough was to be released or discharged from the suit against him?

(Objected to as before, and also because the witness has explicitly stated, in his answer to interrogatory 6, that he knew of no understanding upon the subject.)

A. I do not think there was any understanding of the kind, as I have stated before, as I heard but very little said about it by those persons engaged in the purchase of stock, and only from very few persons.

Q. 9. State whether or not there was at any time a written agreement made and entered into between the persons engaged in the purchase of stock, or any, and who of them, and if so, will you produce that agreement, if you have it in your possession, and annex the same, or a copy of it, to this

deposition; and if you have it not in your possession or control, state what has become of it; and if lost or destroyed, state the contents of that agreement as near as you can, and by whom it was signed?

(Objected to as in interrogatory 2.)

A. There was a writing signed by a part of the persons who were purchasing stock which I signed myself; there were several names upon it before I signed it, perhaps three or four, but I don't know who they were, I have n't seen the paper since I signed it, and I don't know what became of it, for I immediately left the room and did n't know what became of it. Nor do I know how many signers there were afterward, if any. As near as I can recollect with regard to the contents, it was an agreement not to sell or accept of any offer for the sale of our stock till after our annual meeting, as there had been that evening a proposition offered, said to be submitted by Governor Stearns, through Mr. J. W. Johnson and Mr. Wm. R. Spalding, proposing to purchase a large amount of our stock at what it cost us, to release the conductor suits, or Mr. Clough, I am not certain which, and to pay \$100,000 bonus. After the gentlemen present had concluded not to accept Governor Stearns' offer, this agreement, not to sell, was entered into. I think there was also an article in it, I won't be certain, that a certain number might vacate the bargain, or make a new arrangement, which number I think was seven. There might have been other things in it, but I do not remember them, or whether there were any other things in it.

Q. 10. What was the whole number of associates of whom seven had the power to control? and give the name and residence of each of them.

(Objected to as to the last, and because it does not appear as stated in the interrogatory.)

A. I know of no farther associates than those who signed the paper, and I know of no one who signed the paper except myself, but supposed it referred to those of the large stockholders who would sign the paper. Upon reflection, after reading over my answer to interrogatory No. 3, my impression is that Mr. George Clough was not present, as spoken of in that answer, with Mr. Edson Hill, Mr. Johnson and myself.

Q. 11. When and where was the meeting holden at which you signed the paper or agreement spoken of in your previous answer, and who were present thereat?

(Objected to the same as interrogatory 2.)

A. It was in Governor Smyth's building, his private room, in Manchester; I do n't recollect the day, some where the last of March or the first of April. I think Mr. J. W. Johnson, Mr. Wm. R. Spalding, Mr. John A. Spalding, Mr. Edson Hill, Mr.

Frederick Smyth, Mr. Anson S. Marshall, Mr. Henry P. Rolfe, Mr. George Clough and Mr. John H. Pearson, were present at the meeting. Those are all that I feel positive about; there might have been several of our Manchester people running in and out. This meeting was in the evening. Mr. Johnson and Mr. Wm. R. Spalding came up from Boston with a proposition, as I understood, from Governor Stearns, to purchase our stock. We came together to hear the proposition and to act upon it. Mr. Johnson and Mr. Spalding stated what the proposition was, or read it. I think it was in writing. They said they were authorized to draw upon Governor Stearns for \$50,000 the next morning, in part payment; but we concluded not to accept the offer, and the memorandum was signed by myself and some others—I do n't know who they were—the sum and substance of which I have stated, that we would receive no further propositions to sell.

Q. 12. By the proposition of Gov. Stearns, as communicated to you by J. W. Johnson and W. R. Spalding, were you and your associates, if you had accepted it, to transfer your stock to him, or to any body else, immediately, or were you to have held it and voted upon it at the next annual meeting of the corporation? State how that was?

(Objected to as before.)

A. I do n't recollect any thing said about it. In the previous communication from Governor Stearns, the matter had been spoken of. In one of the propositions, proposed as from Gov. Stearns by Mr. Johnson, I think the matter was mentioned, that what stock we held or did n't transfer to him at the time, we were to vote upon, and use our influence to have a certain contract ratified at the annual meeting, which Mr. Stearns was at that time trying to negotiate or negotiating with the existing Board of Directors. But as we did not know any of the provisions of the contract, we did n't wish to bind ourselves to favor it. And I myself made a motion to decline to accept Governor Stearns' proposition, saying that if we sold our stock, we did n't wish to sell ourselves, which motion was unanimously agreed to.

Q. 13. At the time Messrs. J. W. Johnson and W. R. Spalding communicated to you and your associates the proposition from Governor Stearns to take your stock at cost and pay you a bonus of \$100,000, why was it not accepted?

(Objected to as before.)

A. I was in favor of accepting it; all the others were against it. That is all the reason I know.

Q. 14. Did those who opposed it assign any reason for their opposition, or did they object to receiving \$100,000 because they wished more, and thought Governor Stearns would pay it, or how otherwise?

(Objected to as before.)

A. Various objections were used; some said it was disgraceful to sell out, and others were opposed to selling out, and wished to have possession of the road to manage it. There were various arguments used; I did n't hear any one say they thought Governor Stearns would pay more; we talked about an hour about it; there was nothing of the kind said about any one's paying more.

Q. 15. State what was the object of yourself and your associates in purchasing the stock of the Concord Railroad Corporation? How much was purchased by all? how much, so far as you can remember, by each, and at what prices?

(Objected to as before.)

A. My object was to obtain possession of the road, so far as I was concerned, considering it a fair investment—at that price it was six per cent, without taxes or drawback—a clean six per cent. I do n't know that the others had any other reason than that. It is a very common thing to purchase stock in manufacturing and other corporations, for the purpose of controlling them. Some 10,000 shares were purchased by the whole, which would average, I think, at about \$85, or from \$83 to \$85, with dividend on. The prices were all the same. Before the annual meeting I had 600 shares; Mr. Edson Hill had 500, and his wife 100; George W. Riddle had 100; Reed P. Silver had 100; Joe. B. Clark, I think, had over 200; Mr. John H. Pearson had some 1000 or 1200, and his wife had some; John Kimball had 100; James R. Hill had 500, I think; Frederick Smyth had 1300 or 1400, I think; Mr. J. W. Johnson and his friends had some 1400 or 1500; Mr. Wm. A. Tower had a large amount, some 2500, I think; Mr. Torrey, his partner, had 100, I think; Isaac Spalding had 300 at that time—new shares that he had purchased—he was a large owner before that; Mr. A. S. Marshall had 250; Dana Sargent, of Nashua, had 100 shares. I do n't think of any more now. The First National Bank, of Concord, had considerable.

Q. 16. What do you mean by saying that the stock was all of one price? Do you mean that you and your associates all paid one price for the stock, or that you and your associates purchased at various prices, and they were all equalized between yourselves, or how otherwise?

(Objected to as before.)

A. Mr. Johnson at first, and afterward Mr. Tower, purchased stock in Boston at whatever sums it was offered, and the prices which they paid for them might have varied, but it was about the same, and the average was, as I have stated, about \$83 or \$85. It was understood, of course, that we would not bid against one another. If I had an order in, and Mr. Smyth had an order in, we would n't wish to bid against each other, but would instruct a broker to buy for both, and thus it would come to the same price.

Q. 17. Did not Mr. Johnson or Mr. Tower, or both of them, pay for some of the stock which they purchased as high as \$87½ or \$90 per share? If so, how did the associates obtain it at \$88 to \$85 per share?

(Objected to as before.)

A. I do n't know that they ever paid such prices. I never heard any thing of the kind from either of them.

Q. 18. State whether or not, while engaged in the purchase of stock, any arrangement was made who was to hold the offices, in case they obtained control of the road? If so, state what that arrangement was?

(Objected to as before.)

A. Various names were mentioned for the various offices from time to time. At the time that Gov. Stearns made his proposition, I do n't think there was any permanent arrangement or understanding made about the matter.

Q. 19. If, subsequently, there was such permanent arrangement or understanding made, state it?

(Objected to as before.)

A. Soon after that the Board as elected were spoken of as likely to become the candidates,—generally understood, I think, including Clerk and Treasurer.

Q. 20. How much stock had been purchased at the time of Governor Stearns' proposition?

(Objected to as before.)

A. I have no means of telling now; 6,000 to 8,000 shares; I should think, 6,000 or 7,000.

Q. 21. Did you and the gentlemen associated with you all have the money on hand with which to pay for the stock purchased by you and them? If not, from what sources did you and they procure this money?

(Objected to as before.)

A. I did n't have all of mine; I borrowed part of it from the Merrimack River Savings Bank, and a part of it from Amoskeag National Bank; Mr. Frederick Smyth borrowed some of the Amoskeag Savings Bank; Edson Hill borrowed some of the Amoskeag Savings Bank; John H. Pearson borrowed some of the Amoskeag Savings Bank; George W. Riddle borrowed some of the Amoskeag National Bank; Reed P. Silver and Joseph B. Clark each borrowed some of the Amoskeag National Bank. This is all, so far as I know.

Q. 22. Please state amounts borrowed in each of the instances you have mentioned, and the rate of interest paid?

(Objected to as before.)

A. I borrowed \$42,500 of the Merrimack River Savings Bank, and \$8,500 of the Amoskeag National Bank; George W. Riddle borrowed, I think it was, \$8,500 of the Amoskeag National Bank; Reed P. Silver borrowed \$6,000 from Amos-

keag National Bank; Edson Hill borrowed \$15,000 from Amoskeag Savings Bank, and I think in the neighborhood of \$15,000 from the Amoskeag National Bank; Joseph B. Clark had some of the National Bank, I presume some \$7,000 or \$8,000, though it might have been more; might have been less; Frederick Smyth borrowed of the Amoskeag Savings Bank \$42,500; John H. Pearson borrowed, I think, some \$20,000, and paid it up in a short time—a part of it, I think, was from the Amoskeag National Bank and a part from the Amoskeag Savings Bank. The rate of interest was “6 per cent on call;” if it laid for a permanent loan it was to be $7\frac{1}{2}$ per cent; it was understood however to be on call.

Q. 23. State whether the interest in any of these cases was paid in advance? and if so, in what cases and for how long time, and what security was given for the loans in the several cases? state fully.

(Objected to as before.)

A. The interest was not paid in advance; so far as the dividends on the stock held as collateral would go, it was indorsed on the notes as interest without any regard to length of time and without regard to the rate of interest—that is if the notes were settled immediately, it was to be at 6 per cent, and if for a permanent loan at $7\frac{1}{2}$ per cent.

The security I gave to the Merrimack River Bank was 500 shares of the Concord Railroad stock, and 200 shares of the Amoskeag Axe Company. The collateral I put in with my stock in the Amoskeag National Bank was 50 shares of the Concord & Portsmouth Railroad stock, and 40 or 50 shares of the Manchester Gas Light Company. Governor Smyth put into the Amoskeag Savings Bank his own note, guaranteed by Natt Head, 500 shares of the Concord Railroad stock, 19 shares of the First National Bank, and some 60 shares of the Northern Telegraph Co. as collateral. Edson Hill, with his own name, put in as collateral in the Amoskeag Savings Bank 250 shares of the Concord Railroad stock. John H. Pearson put in, I think, Government 5.20s in the Savings Bank; I would n't be certain what in the National Bank. The others, I think, put in part railroad stock and part something else, I do n't remember now. I think George Riddle put in part railroad stock. Our Directors considered the security abundantly good.

Q. 24. Will you explain the difference between “call loans” and “permanent loans,” as you have used them in your last answer?

(Objected to as before.)

A. “Call loans” are given on demand; the bank lending may demand it any day, and the party borrowing may pay it any day, upon notice. “Permanent loan” is where it lies by agreement for a certain length of time.

Q. 25. State whether the loans you have mentioned, with the exception of Mr. Pearson's, have yet been paid, or how, otherwise?

(Objected to as before.)

A. Mr. Hill has paid something on his; he is the only one, I think.

Q. 26. Have the residue of the loans become permanent, or are they still "call loans?"

(Objected to as before.)

A. No action has been taken by the directors. Mr. Smyth proposed some time since to pay his, as he said he had an offer of money at six per cent on longer time. I told him that perhaps he had better let it lay for a time, as we had n't much call for money at present, and so he did.

Q. 27. State how, if any way, the persons engaged in the purchase of stock are connected with the banks from which these loans have been procured?

(Objected to as before.)

A. Frederick Smyth is Cashier of the First National Bank, and Treasurer of the Merrimack River Savings Bank; Reed P. Silver is a Director in the Amoskeag National Bank; Edson Hill is Director in the National (Amoskeag) Bank; I am President and Director of the Amoskeag National Bank, and President and Treasurer of the Amoskeag Savings Bank.

Q. 28. Please state the names of the board of officers, which you mentioned in answer to a former interrogatory, as agreed upon by persons engaged in the purchase of stock, and subsequently elected at the annual meeting of the Concord Railroad Corporation, with their residences?

(Objected to as before, and for the further reason that no such agreement has thus far been testified to.)

A. I don't recollect of having stated any list as agreed upon. The persons elected were Isaac Spalding, of Nashua; Edson Hill, of Manchester; Frederick Smyth, of Manchester; John H. Pearson, of Concord; J. W. Johnson, of Enfield; Wm. R. Spalding, of Lawrence; Wm. A. Tower, of Boston. Isaac Spalding was elected President, Anson S. Marshall was elected Clerk, and Moody Currier was elected Treasurer.

Q. 29. State whether or not there was ever, to your knowledge, any talk or expectation, at any time, among the gentlemen associated with you in the purchase of stock of the Concord Railroad Corporation, of receiving any more than 10 per cent dividends on the stock of said corporation? if so, what was that talk or expectation? state fully.

A. There was never any thing to my knowledge, except back dividends, which might, if there was any surplus on hand at any time, be divided.

Q. 30. State the amount of those back dividends, as they were understood by you and your associates?

(Objected to as before.)

A. Some one estimated them, I think, at \$20 or \$30 on a share.

Q. 31. Was there never any talk or expectation, between you and your associates, as to the creation of new stock, for any purpose? if so, for what purpose, and under what circumstances?

(Objected to as before.)

A. I have never known any thing of the kind.

Q. 32. State whether any action has been taken by the Concord Railroad Corporation, or its directors, in relation to the conductor suits, or any of them? if so, state what?

(Objected to as before.)

A. Not to my knowledge.

Q. 33. You mention, in your answer to an early interrogatory, that you at one time declined to purchase stock with certain gentlemen, and subsequently changed your mind and concluded to do so. Please state what influenced you in these changes? explain fully.

(Objected to as before.)

A. I thought it would be difficult to purchase stock enough to effect a change in the management of the road; but afterward learned from Mr. Hill that considerable stock had been obtained, and thought it possible then to effect such a change in the management of the road.

Q. 34. You mention in one of your answers to former interrogatories, that it was understood that a gentleman in Lowell had a large bill against the corporation, incurred in the conductor suits, and that other counsel employed on the road might have bills unliquidated. Will you state how you understood the corporation would be relieved of these bills by discontinuing or settling the conductor suits?

(Objected to as before.)

A. I did n't expect they would be relieved from any legal expenses already incurred, but wished to avoid any expenses in future.

Q. 35. How much stock in all, did James W. Johnson purchase for himself and others? state as nearly as possible how early he commenced making those purchases, and how long he continued?

(Objected to as before, and for the further reason that the witness can have no knowledge about the matter except from hearsay, which is not evidence.)

A. I have no means of telling, neither when he began, nor when he left off, or how much he purchased.

Q. 36. How long, according to your recollection, had he

been engaged in purchasing stock prior to the time when he and Wm. R. Spalding, as you say, communicated to you and your associates Gov. Stearns' proposition?

(Objected to as before.)

A. I have no means of telling when he began to purchase. During the winter I understood he was purchasing stock.

Q. 37. Did he so inform you, or not?

(Objected to as before.)

A. I think at the time Messrs. Pearson, Johnson, Hill and myself. He mentioned to me, or some one mentioned in his presence, that he had purchased a number of shares, or considerable.

Q. 38. Was any of the stock mentioned by you as given as collateral for loans obtained to pay for Concord Railroad stock purchased, transferred to the banks from which those loans were obtained, and those transfers recorded upon the books of the corporations in which the stock belonged? if so, what portion of them?

(Objected to as before.)

A. Not any of them, to my knowledge.

Q. 39. How, then, were the collateral stocks transferred, and what kind of security did such transfers furnish to the banks?

(Objected to as before, and the latter part, also, because the witness is not bound to give his legal opinion upon the matter.)

A. The stocks were transferred in blank upon the back of the certificates, giving good security to the banks, in my opinion; first, because the notes were good enough without the stocks, and second, because the stocks were legally transferred.

Q. 40. What is the statute requisition with regard to transfers as collateral securities, and otherwise?

(Objected to as before.) The counsel instructs the witness not to answer, because he thinks it highly improper to take up the time of the witness, the Court and himself, with the answering of questions of this kind.

A. That may be found on page 279, General Statutes, section 12.

Q. 41. How much has Edson Hill paid on his loans to the Amoskeag National and the Amoskeag Savings banks?

(Objected to as to question 2.)

A. I think he paid, beside the dividend indorsed on, \$300 on the \$15,000—but do n't recollect whether he has paid any thing on the other, the one in the National, or not.

Q. 42. Did you and your associates make any calculation what percentage on the capital stock of the Concord Railroad Corporation that road and its branches was capable of earning over and above its expenses? If so, state what calculation you

made upon that subject, and what expectation you indulged in that matter?

(Objected to as to question 2.)

A. We made no calculation. I have heard it talked by some body and some where, I can't tell whether it was by stockholders or not, that if the road was economically and honestly managed, and the various pickings and stealings were cut off, the road might earn twenty-five per cent, but we did n't anticipate any such percentage.

Q. 43. Why not?

(Objected to as before.)

A. I do n't know any particular reason why not; I had no such expectation myself.

Upon cross-examination, deponent says as follows, in answer to the following interrogatories:

Q. 44. (*By counsel for defendant.*) At the time you first heard of Gov. Stearns' proposition to buy the stock of yourself and others, as stated in answers to interrogatories 9 and 11, what position, if any, did Governor Stearns hold on the Northern Railroad?

(Objected to as incompetent, and not calling for the best evidence.)

A. He was President of the road, I think.

Q. 45. Is paper "A," hereto annexed, a copy, or a substantial copy, of the proposition that Mr. Johnson brought from Mr. Stearns, in writing, as stated in your answers to interrogatories 9 and 11?

(Objected to as incompetent, and not furnishing the best evidence.)

A. I can't say.

Q. 46. What is your impression?

(Objected to as incompetent and inadmissible, witness not having stated that he had any impression on the subject.)

A. My impressions are that I did n't see the paper, but that Mr. Johnson stated the sum and substance. Whether it's the same as Mr. Johnson had, I do n't know. I have no impressions about the matter.

Q. 47. Had any agreement in writing been made or signed by any body in relation to the purchase of stock, or the sale of stock owned by them, or in relation to any of the matters growing out of the purchase or ownership of stock, prior to the evening when Mr. Johnson brought this written proposition from Governor Stearns, as stated in your answers to interrogatories 9 and 11, to your knowledge? and before the receipt of the proposition from Governor Stearns had there been any talk between those who had purchased stock, about their selling their stock, or had they any intention of selling it at that time, so far as you know?

(Objected to as incompetent, involved, assuming what has not been proved, and impossible to be answered by the witness.)

A. There had been no written agreement to my knowledge prior to the evening when Messrs. Johnson and Spalding brought the written proposition from Governor Stearns, and before that time there had been no talk farther than in relation to the prior verbal proposition from Governor Stearns?

Q. 48. In your answer to interrogatory 15 you speak of the First National Bank of Concord having considerable amount of stock—do you know when they bought that, whether at the time you purchased, or a long time, a year or more, previous?

A. I do not know any thing about it.

Re-direct—resumed.

Q. 49. Prior to the written proposition from Governor Stearns, received through Messrs. Johnson and Spalding, had there been a verbal agreement between the purchasers of Concord stock in relation to selling or not selling the same except by unanimous consent or otherwise? if so, state what that verbal understanding or agreement was?

(Objected to as to interrogatory 2.)

A. I don't think there was any agreement entered into between the purchasers of stock—there might have been a sort of understanding that no one should sell unless all did. I should n't have felt free to sell, myself, unless the rest of them that were buying did so.

MOODY CURRIER.

A.

1. To buy not exceeding 7750 shares at \$85 per share, to be paid presently; the present owners of said shares hereby agreeing to use their influence and votes in favor of the contract hereinafter mentioned.

2. A business contract to be made between the roads.

3. When such contract shall be made and completed, an additional sum of one hundred thousand dollars to be paid in full for the balance of the price of said stock.

4. The purchasers to indemnify George Clough against the suit now pending against him in favor of Concord Railroad, so that the same be entered *neither party*, without any judgment in the same.

5. The Northern Road to pass a vote in substance that the President be a committee to make a business contract with the Concord Road, upon such terms as he may deem for the interest of his corporation, and to make such arrangements for that purpose as he may deem expedient.

Further deposition of Moody Currier.

I, MOODY CURRIER, of Manchester, N. H., being duly sworn, depose and say, in addition to my previous deposition, as follows :

(Interrogatories by E. A. Hibbard, of counsel for the complainant.)

Q. 1. State whether or not the sum of forty-two thousand five hundred dollars, which you obtained of the Merrimack River Savings Bank, was used in making original purchases of Concord Railroad stock, or how otherwise?

A. The railroad stock that I purchased was obtained for me through the Amoskeag National Bank. The forty-two thousand five hundred dollars was paid into the Amoskeag National Bank for the stock, or for the money they advanced for me. Mr. Johnson negotiated for the stock in Boston for me at my request.

Q. 2. At the time you paid said sum to the Amoskeag National Bank, who owned the five hundred shares of stock which it was used to pay for—you or the bank?

A. I suppose it was strictly mine. Though, if I had failed to pay for it, it would have belonged to the Bank, as they had advanced the money for it. I requested Mr. Chandler, the Cashier, who was going to Boston, to pay for the stock, if there was any there for me.

Q. 3. Did or not said Chandler use the funds of said bank in paying for stock purchased for other parties, to your knowledge? If so, what?

A. I don't think that he did. I think that he did loan to Mr. Ja's W. Johnson, and I think to Mr. Edson Hill, a sum of money, it may have been twenty or thirty thousand dollars, for a few days, for which he took a memorandum check, or some other acknowledgement of indebtedness, and received interest on the amount.

Q. 4. What security did the bank at any time have for the forty-two thousand five hundred dollars which Mr. Chandler used in purchasing said stock for you?

A. They held the stock, as that was transferred in blank, and what other claims they might have upon me for making it good. I suppose if the transaction had been held to be irregular, they would have held Mr. Chandler's bond for the improper use of the funds. I think his bond is for thirty thousand dollars, I am not certain. My impression is that this five hundred shares, and some more, was all bought at once; but I am not certain as to that. I do n't recollect of but one occasion. Mr. B. F. Martin had one hundred shares, that he sold in Boston, and Mr. Johnson sent word to Mr. Chandler that he

wished he would pay Mr. Martin for his stock, and he would be in Manchester in a few days and pay him, which was done.

Q. 5. State the date of the loan to you by the Merrimack River Savings Banks; also, the date of the loan to Frederick Smyth, by the Amoskeag Savings Bank, and on what time the notes given for said loans were made payable?

A. I don't recollect the date of the loan to me by the Merrimack River Savings Bank, nor the date of the other. But they were about the same date. The notes were made payable on demand. I think the notes were both of the same date, though Mr. Smyth's was not given till several days afterward, but I think the notes were both dated back for the purpose of making the interest right.

Q. 6. Is it customary in your bank to make notes payable on demand?

A. Most all of our notes are made payable on demand. When discount is taken, the notes state with interest after so long a time. Call loans do not specify the time.

Q. 7. Was it, or not, agreed between you and Frederick Smyth that he should have \$42,500 from your savings banks and you \$42,500 from his savings bank; and was it, or not, understood by both of you that all the money was to be used in purchasing Concord stock?

A. I mentioned to Mr. Smyth that I wished to borrow some money from his savings bank, as there was a clause in the charter of our savings bank, prohibiting any loans to the officers. He said that he would let me have it, or something to that amount. He said he had made arrangements for what money he wanted. I suggested to him that we could let him have some if he wanted it, and he finally concluded to take some — that was about all. I think he said he would take the same amount of the Amoskeag Bank — we had purchased the stock before that. I wished for what I borrowed to replace the money in the National Bank, as I before stated. Some days afterward, Mr. Smyth said he had an offer of the money from a gentleman in New-York, and spoke about paying it. I told him we would as soon have it lie as have it paid.

Q. 8. What was the rate of interest on those two notes?

A. The rate was to be the legal rate, if it was a temporary loan; if it remained any length of time, it was to be the usual rate — seven and a half, I think, was spoken of. Money was very plenty at that time, and the rate for call loans in Boston at that time was not over five or six per cent.

Q. 9. Did you understand, at the time you loaned Gov. Smyth said money, that it was to be used to pay for Concord stock?

A. I did not. I did not know what he was to do with it.

Q. 10. Did you, or not, testify before the Judiciary Com-

mittee, at the last session of the Legislature, that you did know that he wanted the money for that purpose?

A. I do n't think I did, because I did not know. I might have presumed or suspected that it was for that purpose. I did not know what he did with the money.

Q. 11. You say, in your fifth answer, that Smyth said he had made arrangements for what money he wanted. Did you, or not, understand that he meant what money he wanted in purchasing stock?

A. I supposed he had reference to money to pay for his stock, or to replace money that he had had from other places. I did not know if it was money to purchase stock or not.

Q. 12. State whether or not you borrowed all the money which you used in purchasing stock before the last annual meeting.

A. I did.

Q. 13. Do you, or not, know any stock that was held and voted on at the last annual meeting by persons that were not *bona fide* owners of it?

A. I do n't know of any, and have not any reason to suspect any thing of the kind.

Q. 14. Upon now hearing your answer to the 22d and 23d interrogatories of your previous deposition, will you state whether all the loans made by the Amoskeag Savings Bank, or the Amoskeag National Bank, to be used in purchasing Concord stock, or paying for the same, and all the loans made during the past winter and spring by either of said banks, which were secured wholly or in part by Concord stock, are there mentioned? If not, please state specifically all others.

A. I think they are all mentioned.

Q. 15. State whether or not any of the notes taken by either of your banks, for money loaned to use in purchasing stock, have been since changed from one bank to the other, or are they all now held by the bank which originally made the loan?

A. There has been no change in either of our banks, nor in any other, to my knowledge.

Q. 16. State whether or not any money was loaned by either of your banks, to be used in purchasing Concord stock, without any note being taken by the bank, except as hereinbefore stated?

A. Geo. W. Riddle purchased some stock, I forget how many shares, and the stock lay a few days before the note was given. He was intending to purchase one hundred shares, and was intending to let it lie till he made up his number. This was in the National Bank; I do n't recollect of any other instance.

Q. 17. State whether or not there was any understanding between you and your associates as to the probability, in the

event of the election of a new Board of Directors, that Isaac Spalding might not desire long to hold the office of president and director, and if so, who was to take his place?

A. I had not any associates. I have heard it stated by hearsay, that Mr. Spalding did not care about holding the place a great while, if he was elected. I never heard Mr. Spalding say any thing about it. I have heard it reported that in case Mr. Spalding did not hold on, Mr. Frederick Smyth might have the place, or Mr. John H. Pearson, or Mr. James W. Johnson. I have heard Mr. John A. Spalding spoken of as being a candidate for his place as director.

Q. 18. Was it, or not, agreed between you and certain persons named in your former deposition, that you would purchase Concord stock until you held or controlled fifteen thousand and one shares, being one share more than half?

A. I do n't think any such agreement was made; but at the time Gov. Stearns made his offer to buy us out, I recollect of saying myself that I was willing to take more stock, and was in favor of continuing to purchase till we and our friends had fifteen thousand and one shares. Most of the persons to whom I spoke were of the same opinion, though I do not think there was any agreement.

Q. 19. Was it, or not, understood that you and those associated with you were to continue to purchase without any limitations as to price?

A. I had not any associates. I never knew of any such understanding among those that were purchasing at that time.

Q. 20. What limitation was there as to price?

A. So far as I know, eighty-five dollars was the price that was being paid. I do n't know that there was any agreement as to price.

Q. 21. State whether or not there was any agreement or understanding that you or others were to take any portion of William A. Tower's stock, after the annual meeting?

A. Not to my knowledge.

Q. 22. Do you know whether said Tower borrowed any money to use in paying for his stock, or whether he has had occasion since the annual meeting to borrow money to be used on account of stock purchases?

A. I do n't know that he has borrowed any.

Q. 23. Were you, or not, applied to to sign a note of forty thousand dollars, or any other sum, to be used in raising money for Mr. Tower, or in connection with his stock?

A. There were some notes signed and put into Mr. Tower's hands for the purpose of raising money; but I think he said he had never used them. I think there were three notes, two of forty thousand dollars each, and one of twenty thousand; I think I signed them all three; I could not say who else signed;

I do n't remember whether any other names were on when I signed them, or not; I understood that others signed them, or were to sign them; I understood that Mr. Tower, Mr. Edson Hill, Mr. J. H. Pearson, and Mr. J. W. Johnson, were to sign them; I do n't know whether the Messrs. Spalding signed them or not; I do n't think I saw the notes after signing them myself.

Q. 24. To whom were said notes made payable, and what use did you understand was to be made of the money which might be raised upon them?

A. I do n't know to whom they were payable. I supposed they were to be used by Mr. Tower, among his friends in Boston, for stock that he was purchasing at that time. I understood from Mr. Tower that he did not find it necessary to use them. I think this was before the annual meeting, but I do not remember the date.

Q. 25. Will you annex hereto a statement or schedule showing the transfers of stock of the Concord Railroad that have been made since you have been Treasurer of the same, the parties from whom and to whom the same have been made, the dates of said transfers, the number of shares so transferred, specifying that transferred as collateral, and for and on account of what said shares transferred as collateral have been made; and have you during that time had any notice, in any way, of shares transferred which have not been entered and completed on the book?

A. I will. (Annexed marked "Schedule A—S. C. E.") The transfer as collateral does not state for what it is transferred. The last five entries, being all under date of July 15, are to be again transferred, as I understand it. Half of it is to be transferred to the Amoskeag Savings Bank, and the other half to the Merrimack River Savings Bank. There are two hundred and forty more to be included with that, that stands to Mr. Tower's credit on the book, for which he has no certificates, making twenty-four hundred in all.

Q. 26. State the whole transaction by virtue of which said twenty-four hundred shares are to be transferred to those two banks?

A. Some time in the first of July, in our savings bank, we had some money. I mentioned to Mr. Tower that if he wanted any money for any thing, I would like to let him have some. I expected that he would take it, viz., one hundred thousand dollars. At the next meeting of the Board of Directors of the Concord Railroad, as I understood, Mr. Tower stated that he had more stock than he cared about keeping, and proposed that the rest of them should take part of it. It was finally agreed that those present would take part of it; I think it was two hundred and forty shares each. Some proposed that each one should take his part of it, and pay for it as he saw fit—that is,

in his own way. It was at last arranged that they were to hire the money and pay Mr. Tower, all together in one note—that is, each sign for the other. I proposed that we would take the note without any other security than that of the names, but they proposed that the stock had better be put in with it, to make the matter all straight, and according to that understanding I suppose the stock is to be transferred and put in with the notes; but it has not yet been done, and may not be done, as the note was not understood to be a permanent arrangement. Part of the note has already been paid; Mr. Pearson has paid his share, and I understand the others are about paying in. The note is dated July 12, 1870, for \$100,000, on demand, with interest; it is a call loan.

(Further interrogatories proposed by John Y. Mugridge, counsel for plaintiff.)

Q. 27. Why did you mention to Mr. Tower the fact that you had \$100,000 in the bank? had he previously intimated to you a necessity for money, and a desire for it?

A. He had not said any thing to me about it. I very frequently go to brokers to obtain loans. I supposed it likely Mr. Tower might want some—Mr. Tower was a broker.

Q. 28. Why did you think it likely that Mr. Tower wanted some?

A. I had no particular reason for thinking so, most all brokers hire money or sell notes. I frequently buy of other brokers there, business paper and stocks. I have applied at other times to Mr. Tower, or Messrs. Tower, Giddings & Torrey, to let them have money. I have applied to Mr. Tower once since that, when I was in Boston, but he did n't wish for it. I applied the same day to two or three other brokers, who did not care for any, money was so easy.

Q. 29. Do you mean to state that you had no other reason than the general reason specified in the last answer for offering at this time said \$100,000 to Mr. Tower?

A. I had no other reason than a wish to loan the money, as we had the money on hand and wished to loan it.

Q. 30. How many shares of Concord Railroad stock was Mr. Tower at this time owning and carrying?

A. I have no means of knowing farther than the statement of the votes that he cast. I think it was 2600 or 2700 shares that he voted at the annual meeting; that is all my knowledge of this stock.

Q. 31. Was he owning and carrying something like \$225,000 worth of stock at this time, reckoned at the prices he paid for the same?

A. I have no further knowledge than stated in the last answer. I suppose he paid for the stock from \$80 to \$85 per share, or in that neighborhood. I only know what he paid

from hearsay, as I never heard Mr. Tower say any thing about the price.

Q. 32. At the time he sold it, what reason did Mr. Tower assign or give, for wishing to sell or dispose of the 2400 shares of stock before alluded to, as sold by him?

A. I did n't hear him give any. I was n't present when the matter was talked over; my understanding was that he had more stock than he cared about carrying.

Q. 33. So far as you know, who were the parties that bargained or contracted with Mr. Tower for this stock?

A. I think most of the Board of Directors were present. I suppose they talked it over with him; that is the most I know about it. They said that was the understanding, and I was willing to take my part, so I took it.

Q. 34. Did you understand that said contract was made at a regular meeting of the Board of Directors? if so, where was said meeting held?

A. The meeting was held at the Amoskeag National Bank, in the Directors' room. I understood the thing had been talked over some with Mr. Tower, and supposed they had come together for that purpose. I do n't know that it was a regular meeting of the Board. I do n't think any other business was transacted at that time. This was the first that I knew about it.

Q. 35. Has all of said 2400 shares of stock been transferred to the parties purchasing the same?

A. It has, as appears from the annexed schedule "A."

Q. 36. Has Mr. Tower received his pay for said stock, so sold and transferred? and did all the money paid therefor to him come from different savings banks in this State?

A. I suppose so.

(Defendant objects to answer, as giving the suppositions of the witness.)

Q. 37. Do n't you know that money was raised at your savings bank to pay a portion of it? and did n't you sign a note at Smyth's bank to pay the balance of it?

A. We let Mr. Tower have \$100,000, as I have before stated, and I signed a note for another \$100,000, running to the Merrimack River Savings Bank. Whether he got the money or not from Smyth's Bank, I have no means of knowing.

Q. 38. What did you understand that the loan of \$100,000 was made for at your bank, and for what did you understand you signed the note of \$100,000 at Mr. Smyth's bank, at the time you signed it?

A. It was to pay for the 2400 shares bought by the persons signing the notes, 240 shares each.

Q. 39. Have the banks, either of them, so far as you

know, to-day, any collateral security for said \$200,000 loaned and obtained as aforesaid?

A. None except the 2400 shares of stock which was left with me, as Treasurer, to be transferred as collateral security.

Q. 40. Do not said 2400 shares of stock stand to-day on the stock book of the corporation, in the name of William A. Tower?

A. Part of them do, part of them do not.

Q. 41. What part do and what part do not?

A. I think 240 shares stand in the name of William A. Tower, as before stated; and the rest have been transferred, as stated in paper "A," and so appear upon the books of the corporation.

Q. 42. Have either of the persons purchasing done so much as ever to indorse in blank any of said shares to either of said banks, as collateral security for this \$200,000 loan, so far as you know?

A. The stock is all regularly transferred to these individuals as appears in paper "A," and on the back of each certificate a regular transfer was made out to the banks, half of the stock to one bank, and half to the other, stating the debt, or note, which they were pledged to secure, and have been signed, all but one or two, and I am waiting to receive the signature of the other one or two before making out a certificate to each of the banks. That is the reason why it does not appear upon schedule "A."

Q. 43. Have you, in fact, delivered the certificates to either of said banks, requisite to perfect their security under the law?

A. I have before stated the certificates to the banks have not been made out, but after the transfer of stock has been made and placed in the hands of the treasurer for a new certificate, I suppose the debt is just as secure as though a new certificate had been made; the same as when a deed is placed in the hands of the recorder, it is just as safe as after it has been recorded.

Q. 44. Have you not stated, in substance, before, in this deposition, that the certificates had not been delivered to the banks, because in a certain contingency the matter of the loan was to be settled in another way?

A. I didn't intend to be so understood; what I meant was, that the note might be paid up before I got the certificates finished; but I expect every day to receive the other signatures, and then I shall deliver the stock to the banks. I think there were only two signatures lacking, one came in yesterday, that of Mr. William R. Spalding, of Nashua, and the one not received is that of John A. Spalding, of Nashua. As soon as I get his signature, I shall make out the certificates; but I consider the note perfectly good without any collateral.

Q. 45. If good without any collateral, why did you take any at all?

A. The parties preferred to put in the collateral, as before stated.

Q. 46. Do you know any thing as to the extent of the personal liabilities of the signers of that note to-day?

A. I do n't know of my own knowledge as to any one but myself; but from my best information, I consider most of the names upon the paper as very strong.

Q. 47. Do you know to-day as to the personal liabilities of Anson S. Marshal, one of the signers of said note, contracted for the purchase of railroad stock alone?

A. I know nothing about it, except his name upon those notes; I know of no other liability.

Q. 48. Can you state of your own knowledge any thing as to the personal liability of either the signers of these notes, except your own?

A. No (nor of any body else).

(Part of answer, in parenthesis, objected to by plaintiff's counsel as not responsive to question.)

Q. 49. State the amount of your own personal indebtedness and liability to-day on account of money raised to purchase railroad stock.

A. In addition to signing the note mentioned before, to Merrimack River Savings Bank, I owe for 600 shares of Concord Railroad stock, which cost me \$85 per share, amounting to \$51,000.

Q. 50. Are you not, also, in addition to the indebtedness and liability mentioned in your last answer, liable on two notes for \$40,000 each, and one note for \$20,000 more, which have passed into the hands of a broker in Boston, Mr. William A. Tower, which notes are still outstanding, so far as you know?

A. I signed such notes, but understand they were never used; that Mr. Edson Hill, I think it was, told me he had seen the two \$40,000 notes canceled,—but I have no means of knowing what has become of the \$20,000 note, further than I understand it has not been used. If it has been used I suppose it has been paid; I do n't know any thing about that.

Q. 51. Have you any personal knowledge as to what became of either of said notes?

A. I have never seen the notes since I signed them. Mr. Hill, who was one of the signers, told me he had torn his name off the two \$40,000 notes. Mr. Pearson, another of the signers, I think, told me the same thing, that he had torn his name off.

Q. 52. For what purpose were said notes given at the time they were made, and at whose request did you sign said notes? were not said notes, in fact, accommodation notes, got up for the benefit of Mr. Tower?

A. I do n't recollect whether it was for the accommodation

of Mr. Tower, or whether he was to buy some stock for the benefit of the signers.

Q. 53. Will you swear that said notes were not got up for the accommodation of Mr. Tower to enable him to raise some money?

A. I could not say whether they were got up for that purpose or not. I do n't know.

Q. 54. Do you know of any other purpose to which you will swear for which they were got up? if so, will you state it?

A. I know of no other purpose except to enable him to raise money; but whether to buy stock for himself or for us, I do n't know. I think said notes were dated the same evening we met to receive Governor Stearns' proposition.

Q. 55. Do you know where John H. Pearson got the money to pay his share of the loan made to purchase the Tower stock, as before stated?

A. He gave me a check for \$7,500, on the First National Bank of Concord; I do n't know where he got any other.

Q. 56. Give the names of the investing committee of the Amoskeag Savings Bank, at the time loans for the purchase of Concord Railroad stock, before alluded to in this deposition, were made?

A. Jacob G. Gilley, Jacob F. James, Stephen D. Greene, together with the President, constitute the Investing Board, and have for several years. I am President and Treasurer of the board.

[Adjourned 12.38 P. M., Aug. 23, to 2 P. M.]

On cross-examination, deponent says as follows, in answer to the following interrogatories:

Q. 57. You have been inquired of as to your disabilities, and also with regard to the liabilities of other signers to notes of which you have spoken? will you state how much you consider yourself worth, and how much you consider the other signers of notes of which you have spoken, worth, according to your best knowledge, information, and belief?

(Objected to, so far as he is concerned, as immaterial and incompetent, and so far as other persons are concerned as hearsay, and otherwise incompetent.)

A. I consider myself worth \$100,000, at least; the other signers—Governor Smyth, I have considered worth from \$50,000 to \$100,000; Edson Hill, the same; John H. Pearson, I have supposed to be worth over \$100,000; Mr. Johnson I have generally estimated at \$75,000; the Messrs. Spalding, I have considered young men in good circumstances, and very well off; but have no definite idea of the amount that each one is worth. Tower, Giddings & Torrey have the reputation in Boston of being very wealthy. I have no definite knowledge of Mr. Marshall's property, and do not know what others value him

at. I have heard Natt Head estimated as high as \$75,000. I should value him at from \$25,000 to \$50,000. At the time Gen. Head signed the note in our Bank, Mr. Smith said he had \$20,000 on deposit in his bank and \$10,000 in the City Bank.

(Answer objected to by plaintiff's counsel as containing hearsay, and otherwise incompetent.)

Q. 58. At the last session of the Legislature were there not any proceedings in relation to various savings banks in this State, upon charges made against them, or their officers? if so, what were those charges? and what banks were the charges made against?

(Objected to as incompetent.)

A. There were charges made against the Amoskeag Savings Bank, the Merrimack River Savings Bank, and one of the Nashua savings banks, of which Mr. E. H. Spalding is Treasurer; the charges were, I think, in part, irregular loans or improper loans made to purchase Concord Railroad stock; there were various other charges, I think; I do n't remember what they were, but was the main charge, I think.

Q. 59. Were these charges tried before the Judiciary Committee of the House? and who appeared in support of them before that committee?

(Objected to.)

A. There was a hearing before that committee, in relation to the charges; Mr. John H. George, Mr. Sawyer, of Nashua, Mr. Briggs, of Hillsborough, Lewis W. Clark, of Manchester, appeared; there were six of them; the other two were, I think—Judge Fowler was one and Mr. Tappan was the other. Mr. George, I think, stated that those six gentlemen had bound themselves together into a ring to prosecute this matter through to the end.

(Answer objected to by plaintiff's counsel.)

Q. 60. Were these gentlemen counsel for Governor Stearns in procuring a legislative ratification of the business contract, and also in the legal proceedings now pending in the Supreme Court of New-Hampshire in reference to that contract?

(Objected to.)

A. I so understood it.

Q. 61. What evidence did these gentlemen introduce in support of these charges, and with what result?

(Objected to.)

A. The Treasurers of the several banks, with their books. I think that the Committee reported that there was no further legislation needed on the subject; the banks appeared to have been well managed.

Q. 62. When was this examination before the Committee, as near as you can state? and did you testify before them, stat-

ing all the facts as you have now stated them in this deposition, so far as they had occurred at the time you testified?

(Objected to.)

A. The hearing was toward the close of the session, I think. I was examined twice or three times, stating to them all the material facts that had occurred that came to my mind, as I have now stated them. I do n't think of any thing of consequence that I stated then that I have not stated now. I have told the same story now that I told then, as near as I can remember.

(Objected to by plaintiff's counsel.)

Q. 63. Did that Committee make a report in reference to these chares, in substance, commending the manner in which these banks had been managed, and against any further legislation in reference to savings banks, and was that report adopted by the House?

(Objected to.)

A. I think they so reported, and the report was unanimously adopted.

Q. 64. Will you annex a certified copy of those charges, and of the report of said Committee, to this deposition, and also the action of the House thereon?

(Objected to.)

A. I will, if I can obtain it. It is here annexed, marked "Exhibit A."

Q. 65. Will you state somewhat of the history of your savings bank whilst under your management, and in regard to its prosperity, in brief?

(Objected to.)

A. It was chartered in 1852. Has been under my charge as Treasurer ever since. At the examination (last) of the Bank by the Commissioner, he put down, amount due depositors at \$2,375,497.66; he then put down as surplus \$142,213.35; to this surplus should be added the premium which the stock and bonds are worth above the par value estimated at, in the schedule, which I think is over \$100,000 more, which would increase the surplus to about \$250,000; the number of depositors is over 6,500. Excepting the first year or two, we have paid to the permanent depositors seven per cent, compound interest. Our annual dividend has been six per cent; every five years we have divided the surplus, making it up to seven per cent compound interest.

(Answer objected to by plaintiff's counsel.)

Q. 66. Will you state whether or not you could have raised all the money you wanted, and all that you did get of the Merrimack River Savings Bank, elsewhere? and state how it was in regard to Governor Smyth in this respect, as to the money

which he wanted and he got from the Amoskeag Savings Bank?

(Objected to.)

A. I don't think I should have had any difficulty in procuring all the money I wanted elsewhere, and presume Governor Smyth could.

(Answer objected to.)

Q. 67. At this time was there money lying in the Amoskeag Bank idle, and so also as to the Merrimack River Bank?

(Objected to.)

A. We had considerable at that time which we wished to invest, but I don't know as regards the Merrimack River Savings Bank.

Q. 68. What are the officers of the Amoskeag Savings Bank, and what are their duties?

A. President, has the general management, and Board of Trustees, consisting of eight; the Treasurer, who has charge of the funds under the Trustees; a Board of Investment, consisting of three of the Trustees, who invest the money, together with the President.

Q. 69. Will you state whether or not all these notes which you have spoken of as having been discounted at the Amoskeag Savings Bank, to accommodate persons who were buying Concord Railroad stock, were discounted by the direction of the Board of Investment?

A. They were.

Q. 70. Was there any arrangement, or combination, or agreement of any sort in favor of persons buying Concord Railroad stock, by which they got their notes discounted in any different way or upon any different terms from what other people got theirs?

A. Not to my knowledge.

Q. 71. Was there any arrangement made by which it was understood or agreed beforehand, that the notes of these people should be discounted, provided they would buy Concord Railroad stock with the money, or any thing of that kind?

A. There was not.

Q. 72. Had the members of the Investing Committee of the Amoskeag Bank any interest, directly or indirectly, in the Concord Railroad or its stock, to your knowledge, or have they ever had?

A. I don't know that either of them ever had a share in the Concord Railroad, or had any interest, further than the Bank held 122 shares and had owned it for a number of years.

Q. 73. After you and your associates, who were buying Concord Railroad stock, rejected the proposition of Governor Stearns to buy up the stock on the ground that he wished you to vote for a contract about which you knew nothing, as you

have previously stated, what further propositions came to you from Governor Stearns, through Mr. Johnson, if any?

(Objected to as immaterial and incompetent.)

A. There was another proposition that he would take the stock and pay the \$100,000, and release the Conductor suits, I think, if we would give up our stock. There was nothing about voting on it—we were to give up our stock and take the money. I think that he applied through Mr. Johnson for a loan of money to carry the stock with. I replied that we would let him have \$100,000 from the Amoskeag Savings Bank if he wanted it. Mr. Johnson said he was authorized to draw for \$50,000, that night, on him (Stearns), at his Railroad office in Boston, and that he (Stearns) had made preparations to meet the draft next morning.

MOODY CURRIER.

SCHEDULE A.

S. C. E.

May 31, 1870,	Mary Elizabeth Kimball to J. W. Johnson, 40 shares.
“ “	Wm. A. Tower to C. B. Hill, administrator, 100 shares.
“ “	Wm. A. Tower to E. A. Presby, cashier, as collateral, 300 shares.
“ “	J. H. Pearson to Eliza C. Davis, 36 shares.
“ “	J. H. Pearson to James R. Hill, 39 shares.
June 1, 1870,	J. H. Pearson to James R. Hill, 216 shares.
“ “	Peter Woodbury Dodge to Perley Dodge, 1 share.
“ 7, “	Estate of Samuel Dinsmore to Wm. A. Tower, 20 shares.
“ 20, “	Abbie S. Stevenson to Wm. A. Tower, 7 shares.
“ 20, “	Susan A. Dewey to Wm. A. Tower, 2 shares. }
“ 20, “	Seth Turner to Wm. A. Tower, 2 shares.
“ 20, “	Sally Dennett to Wm. A. Tower, 15 shares.
“ 20, “	Sally Dennett to E. H. Spalding, 20 shares.
July 11, “	Louisa S. Knowlton
	To Daniel Bradt, 2 shares.
	“ Joseph G. Carlton, 1 share.
	“ Daniel R. Marshall, 2 shares.
	“ Elizabeth C. Spalding, 1 share.
	“ Miss H. Ritter Spalding, 1 share.

7 shares.

July 11, 1870,	Sarah L. Green to Wm. A. Tower, 1 share.		
" 12,	" Woodbridge Odlin, Executor,		
	To Mary E. Kendall, 3 shares.		
	" Wm. B. Kendall, 3 "		
	" Alice L. Kendall, 3 "		
	" E. B. Kendall, 1 share.		
			<hr/>
			10 shares.
" 14,	" J. W. Johnson to Wm. A. Tower, 18 shares.		
" 15,	" Wm. A. Tower,		
	To Moody Currier,		
	" Edson Hill,	} 240 shares each.	
	" E. H. Spalding,		
	" W. R. Spald'ng,		
	" Anson S. Marshall, 200 shares,		960
	" J. W. Johnson,	} 140 each.	200
	" John A. Spalding,		280
	" John H. Pearson, 20 shares.		20
			<hr/>
			1460
" 15,	" Isaac Spalding to Frederick Smyth, 240 shares.		
	" " A. S. Marshall,	40	"
	" " J. H. Pearson,	20	"
			<hr/>
			300
" 15,	" J. W. Johnson to John H. Pearson, 200 shares.		
" 15,	" Ellsworth Torrey to John A. Spalding, 100 shares.		
" 15,	" Geo. Stratton to J. W. Johnson, 100 shares.		

WEDNESDAY, Aug. 24.

(Deposition of ONSLOW STEARNS resumed.)

Q. 44. At the time the contract of April 29, 1870 was made, did you not expect to be appointed the agent therein provided for?

A. There was nothing said about that. I did n't have any expectation about it. If the thought had occurred to me I should have naturally supposed they might appoint me.

Q. 45. How early did the thought occur to you as to who might be the agent of the joint management?

A. I do n't know when it occurred to me, until the meeting when the appointment was made, which was very soon after the contract was signed.

Q. 46. When the subject did first occur to you as to whom the agent for the joint management should be, did the expectation at the same time arise in your mind that you would be the man?

A. I presumed I should. Whenever the thought occurred to me, I presumed I should be the person. I was acting as General Agent for the Northern Road, and should not suppose they would appoint any other person.

Q. 47. Are you able to say that the thought never occurred to you at all as to the person who might be appointed agent of the joint management, until after the contract was completed?

A. I have no recollection of the thought occurring to me during the making of that contract of April 29. In the summer previous, when negotiating with the Concord Road for a similar contract, I supposed that I should be the agent if the contract was made, and I should still, and at this time I should suppose I would have been the agent, although no action of the Board was taken upon the subject. I had as much business as I cared to attend to, and therefore the thought of additional positions was not particularly in my mind. In making that contract, my chief object was to promote the interests that I represented, and the public.

Q. 48. Will you produce and annex to this deposition a copy of the contract executed between the Northern Railroad and the Vermont Central and Ogdensburgh railroads, in February, 1870, as stated by you in your answer to interrogatory 2?

A. I did not state that any such contract was made, but stated that a contract was made between the parties forming what is termed the Vermont Central line, which consists of the Vermont Central Road in Vermont and Canada, the Northern Railroad, the Concord Railroad, the Nashua & Lowell Road, and the Boston & Lowell Road. I will furnish a copy of that contract, to be annexed to this deposition. I think it is printed, and have no doubt I have a copy at the office.

Q. 49. Was there another contract, to which the Ogdensburgh Railroad was a party, with certain other railroads, by which guarantees were made to the Ogdensburgh Road, or some other road, or any thing of the kind? If so, will you please state what the contract was, and who the parties to it were, and also annex a copy?

A. The Vermont Central and the Vermont & Canada railroads leased the Ogdensburgh and Lake Champlain Railroad for a period of twenty years. The roads below White River Junction agreed to give up so much of the business coming from the Ogdensburgh Road, which the Vermont Central should send over those roads, as might be necessary to insure the payment to the Ogdensburgh Road—that is, the amount to be paid for the lease. The roads below White River Junction signed this agreement, with the exception of the Concord Road. As the Vermont Central Road had the control of that business, and could send it down the Connecticut River route, it was thought expedient to make this arrangement. I will annex a copy, if I can get one. I have never seen it in print; it is held by some party to be executed, but I think I can get a copy of it.

Q. 50. About what time was this contract, named in your last answer, executed by the Vermont Central and the other roads below, with the exception of the Concord Road, and was the contract presented to the proper officers of the Concord Road for execution? if so, when and whose fault was it, if fault there was, that the contract was not signed by the Concord Road?

A. I do n't know when the contract was signed by the Central & Ogdensburgh Roads, but after that was executed, then came up this guarantee contract, which was about the time the line contract was signed, or a little after, as I think. The line contract was signed about the 24th or 27th of February, 1870. I do n't now recollect when this contract was signed by either of the roads below White River Junction; but it was not a great while after the line contract was signed. Judge Minot, President of the Concord Road, assisted in drawing up the contract, and afterward declined to execute it. I do n't know whether it was presented to any other person connected with the Concord Road. I can't tell when it was presented to Judge Minot, but it was some time not a great while after the line contract was made. There were several meetings in regard to it. I do n't know that any one was at fault, since that Judge Minot declined to sign it.

Q. 51. With whom did Judge Minot, in the summer of 1869, propose to make a contract in behalf of the Concord Railroad, by which it should receive ten per cent dividends, &c., as you have stated in this deposition?

A. He made the proposition to me, at interviews we had in

relation to a contract. I do n't know but what he made propositions to others; I do n't know as to that. He told me that he had talked upon the same subject with Mr. Lyon, or the officers of the Montreal Road.

Q. 52. Was this proposal upon the part of Judge Minot, for a contract with the Northern Road alone, or for a contract with the Northern and Montreal Roads jointly, or what was it, and what were the terms of it?

A. It was for a contract between the Northern, and Boston, Concord & Montreal roads and the Concord Road. The Northern and Boston, Concord & Montreal roads were to pay ten per cent per annum to the stockholders of the Concord Road, keep the property, and return it in as good condition as they received it, in all respects, at the end of the contract. These were the general terms; no details were agreed upon.

Q. 53. Was it contemplated by this proposed contract that the three named railroads should all be run together on a joint business, or was it contemplated that there should be no joint business between the Montreal and Northern railroads, except so far as business of the Concord Railroad was concerned?

A. I suggested that the three roads might be worked together, the profits be divided according to past dividends of those roads, which Judge Minot declined, claiming that the stockholders of the Concord Road should be guaranteed 10 per cent, the legal rate of dividends. There was nothing said about working them jointly or otherwise. I had no interviews with the officers of the Montreal Road, but my intention was to make a business contract by which the roads should be worked together and divide the income upon some agreed basis—supposing a saving could be made to the public and the roads in that way.

Q. 54. What were the suggestions of Judge Minot, if any, as to what the contract should be in other respects, beside guaranteeing 10 per cent to the Concord Railroad?

A. We did not go into details, and he did not make any suggestions, that I recollect, except that we were to carry out all agreements existing between the Concord Road and roads in connection with it, and to keep and return the property in as good condition, in all respects, as when the contract was made.

Q. 55. Was there any suggestion as to the length of time the property was to be kept and then returned?

A. I do n't recollect in regard to that, except that I supposed the contract to be for five years.

Q. 56. How many different times in the summer and fall of 1869, was this matter discussed?

A. I do n't recollect. I had interviews with him quite a number of times with reference to some contract. At some times I talked with him in reference to the allowance that

should be made on the business to the Sugar River Railroad. Also a contract for the business of the Contoocook River Railroad and the Concord & Claremont Railroad.

Q. 57. Can you give any idea as to the number of interviews you had with Judge Minot in reference to the particular contract for running the three named railroads together, in some way?

A. I can not, but it was quite a number of times.

Q. 58. Can you tell how these interviews terminated in reference to that subject?

A. Judge Minot told me that after having interviews with the officers of the Boston, Concord & Montreal Road, that there seemed to be so many difficulties in the way of making a contract between the three parties that he considered it impracticable.

Q. 59. Did all further negotiations drop there, so far as that scheme was concerned?

A. I do n't recollect when negotiations dropped, but it was not till after he said that he thought it would be impracticable to make an arrangement of that kind.

Q. 60. Will you give us your best impressions as to about when it was that Judge Minot came to the conclusion that the scheme was impracticable, and announced it to you?

A. I do n't know when he came to that conclusion, and do n't recollect when he told me he thought it was impracticable, but think it was some time in the fall of 1869.

Q. 61. Will you state whether or not any further negotiations (after the announcement of Judge Minot named in your last answer) took place between you and Judge Minot, in reference to a contract for having the Concord Railroad run by the Northern, or any other railroad, until after the failure of your negotiations with James W. Johnson? if so, what were those further negotiations, and when did they take place?

A. I think I talked with him about a contract for the business of the Northern Railroad after the time he stated it would be impracticable to make a contract in connection with the Boston, Concord & Montreal Road, prior to the time that Mr. Johnson, representing the ring, as he said, proposed a contract for twenty years, between the Northern and Concord Roads, by which the Northern Road was to guarantee ten per cent to the Concord Road. I think after Mr. Johnson made this proposition, and before the failure of it, I had interviews with Judge Minot, and we talked about a contract between the Northern and Concord Roads similar to that that had been proposed in the summer and fall of 1869, but I can't say where or when these interviews occurred. I do n't recollect the places.

Q. 62. In the first part of your last answer you speak "of having talk with Judge Minot about a contract for the business of the Northern Railroad;" do you refer, by that language, to a contract by which the Concord Road was to be run by the Northern? or some other kind of contract?

A. I talked with him about a contract for the business of the Northern Road, for a period of twenty years, the same length of time as the contract between the Vermont Central and the roads below, for the business of the Northern Road, at reduced rates; also the Concord and Claremont, and Contocook River Railroad, with a condition for an allowance on the business from the Sugar River Railroad. I do not know when these interviews were. I met the Judge quite often, sometimes at Concord, sometimes in the cars, and sometimes in Boston, and we often talked about the business of the roads.

Q. 63. Will you state what kind of a contract you refer to, by the following words in your answer to interrogatory 61: "I talked with him about a contract for the business of the Northern Railroad?" Whether or not it is a contract by which the Northern Railroad was to run the Concord Railroad, or some other kind of contract?

A. It referred to a contract by which the Concord Road was to do the business of the Northern Road and the other roads in its control.

Q. 64. At the time your negotiations, before spoken of, were pending with James W. Johnson, did you have talk with Judge Minot in regard to the contract which you were negotiating with Johnson for aid in effecting?

A. I do n't understand the inquiry.

Q. 65. Have you not spoken of negotiations between you and Johnson, by which you and he had talk of Johnson's aiding you in effecting a contract, by which the Northern Road should run the Concord Road for twenty years?

A. No; I stated that Mr. Johnson had proposed to make a contract with the Northern Railroad for a bonus of \$100,000, and taking a certain amount of stock, at a certain price, belonging to the ring, as he termed them, for twenty years.

Q. 66. Did you have any negotiations with Mr. Johnson about making such a contract for twenty years?

A. Yes; I agreed with Mr. Johnson for a contract for twenty years. Mr. Johnson represented to me that he could control the ring, to make such a contract, and represented to me the amount of stock he could control to carry out the agreement; and said that some of the members of the ring would aid in getting legislative action, and any other measures necessary to perfect the contract.

Q. 67. While these negotiations were pending with Mr.

Johnson, "about making such a contract for twenty years," did you have any talk with Judge Minot about such a contract for twenty years?

A. Judge Minot was one of the directors of the Northern Road; I stated to him the negotiations or arrangements proposed by Mr. Johnson.

Q. 68. During these negotiations with Johnson, did you have any talk with Judge Minot, as an officer of the Concord Railroad, in relation to such contracts, and as to what his views were as to such a contract, as an officer of the Concord Road? and as to what he would do about making such a contract, as an officer of the Concord Road?

A. I talked with Judge Minot in relation to the proposal of Mr. Johnson, and said it was to be similar to the one we had talked about in the summer of 1869, except as to length of time. Judge Minot said that he could not be a party to any contract of that kind, on the ground of the character of the men composing the ring, and the manner in which they were procuring the stock, and because that the suits against the conductors should be given up.

Q. 69. Did Judge Minot adhere to those objections, or did he withdraw them, and assent to such a contract, including the withdrawal of the Clough suits?

A. Judge Minot, as director of the Northern Road, said he could not agree to the contract proposed by Mr. Johnson; but if the other directors desired it, he would assent, or not make any opposition.

Q. 70. Have you not a memorandum on the back of paper marked "No. 5," to the effect that Judge Minot assents, as well as yourself, to such a contract, and also to the withdrawal of the Clough suits, and also to other things? in fact, to all the matters that you and Johnson settled upon as the result of all your negotiations?

A. Mr. Minot was present at an interview at the Northern Railroad office, after Col. Tappan and Mr. Johnson had drawn up the basis of an agreement; I stated to him the substance of the agreement, and he said, as I have before stated, that he was unwilling to make any agreement in relation to the matter, and would oppose it, unless it was the desire of the other directors that it should be carried out. If they were earnest in that respect, he would assent, or not make any opposition, and I accordingly noted on the memorandum, or basis for a contract, an understanding with Mr. Johnson in relation to the stock to be taken, and that Mr. Minot would assent. There were no details mentioned to Mr. Minot, as I remember, at that time, except those mentioned in the paper or memorandum for a contract. The Northern Road had no interest in the Clough suit, and did not care whether it was withdrawn or

not, so far as it affected their interests. It had been proposed that \$10,000 should be added to the bonus of \$100,000, to go to Mr. Clough in case he had to pay judgments for that amount or more, to the Concord Road; but that was not provided for in this memorandum of agreement.

Q. 71. Will you annex the original paper marked "No. 5," which contains the basis of the contract, as stated in your last answer? and will you annex the original of this paper, and not the copy?

A. It has been before stated that a copy would be annexed, and I do not propose to change that, unless the court or commissioner are of the opinion that the original should be annexed.

(Adjourned at 12 h. 5 m. to 2 P. M., Aug. 24.)

Q. 72. If Judge Minot and his Board of Directors would not make the desired contract for twenty years, how did you and Johnson, by your agreement, contemplate that such a contract should be effected?

A. Johnson represented to me that he had stock enough to control the election of Directors; that a Board would be elected favorable to the contract he proposed to make; and I supposed, from the representations he made, that he had, or would secure, the stock necessary to do so.

Q. 73. Who were the persons that were to constitute this Board of Directors, who should be favorable to the contract, according to the agreement or understanding between you and Johnson?

A. No persons were fully agreed upon.

Q. 74. Were any partially agreed upon? if so, whom?

A. It was agreed that William R. Spalding should go into either the Concord or the Manchester & Lawrence Board; it was talked about Governor Smyth going into the Board. Mr. Johnson said that he had agreed with him to go in, and carry 500 or 1000 shares, or that he should be paid \$90 per share and go out, and work for the contract. It was also understood that Isaac Spalding should go in, and be President of the road for a short time; that he should resign, and that John Spalding should take his place in the Board. Mr. Johnson was also to be a Director in the Concord Road, but preferred to go into the Northern Road as Director. These, I think, were all that there was any understanding about, so far as going into the Board.

Q. 75. Were there any other persons whose merits or claims were discussed with reference to their being Directors? and if so, who were they?

A. I do not recollect in particular any other persons except Judge Minot and Mr. Pearson.

Q. 76. What was said about them?

A. Mr. Johnson said that some members of his ring would n't consent to Judge Minot's going in, and, as I did not suppose any arrangement could be carried out, if Judge Minot and his friends opposed, I talked with him in relation to the matter. He said he was content to be left off, if Mr. Pearson was, or something to that effect. So it was understood that neither of those should go into the Board.

Q. 77. What arrangement do you refer to, in your last answer, when you say you did n't suppose any arrangement could be carried out if Judge Minot and his friends opposed?

A. I referred to the contract proposed by Mr. Johnson, for I did not think that he (Johnson and those who agreed with him) had stock enough, at this time, we were talking about it, to control the election.

Q. 78. Did you understand Mr. Minot to assent to the Board as suggested, provided he and Pearson were both left off, and to assent, with the understanding that this Board would be favorable to a contract of the kind which you say Johnson proposed?

A. No. I understood that Judge Minot would not agree to any arrangement of the kind, but that he would not use active opposition if the Northern Road desired it.

Q. 79. If the Northern Road desired what?

A. Desired to make an arrangement or agreement as proposed by Johnson.

Q. 80. Did Minot assent or give you to understand that he would not oppose the election of the Board of Directors you have named, provided he and Pearson were both left off?

A. I don't know as Mr. Minot knew who it was proposed to elect, for none had been really agreed upon. There was some talk about Nathan Parker, of Manchester, going on the Board; talk between Johnson and myself; that is, I think there was. I do n't recollect whether I named the persons Johnson and I had talked about to Mr. Minot, generally; it did n't seem to me there would be any trouble in making up a Board if those two persons could be disposed of.

Q. 81. Did Judge Minot give you to understand that he would n't oppose any Board of Directors which you might arrange for, and which left out both him and Pearson?

A. No. I understood that he would be opposed to any arrangement to carry out the agreement which Mr. Johnson proposed.

Q. 82. Did you then understand Judge Minot to assent to any thing touching any Board of Directors, when he said, as you have stated in reply to interrogatory 76, that he was content to be left off if Mr. Pearson was?

A. No, I understood that he would not make active opposition to the arrangement proposed by Mr. Johnson, if the

Northern Road desired to carry it into effect, although I understood he would be opposed to it.

Q. 83. Did Judge Minot give you to understand that he would not make active opposition to any Board of Directors which you and the Northern Railroad might desire, and which left out both him and Pearson?

A. He never gave me any such understanding, because there was never any such discussion between us, as I am aware.

Q. 84. Was it or not understood between you and Minot, or between you and any body else, that Mr. Minot was to remain one of the Board of Concord Railroad directors, if it could be satisfactorily arranged all around so that he could?

A. I had no understanding in relation to it, because we did n't get so far along as to form a Board. The question as to who should form a Board was discussed between Mr. Johnson and myself; it was found impracticable to form any Board with Minot and Pearson in it.

Q. 85. Did you desire or intimate to Johnson that you would like Minot retained in the Board? and did Johnson oppose it? and if so, what reasons did he give?

A. I do n't recollect of expressing any desire to Mr. Johnson of retaining Mr. Minot in the Board; but I thought he would make a good director, and should have been glad to have him one of the Board; but Mr. Johnson said there was objection to him, and I think he had personal objections to him, but I do n't recollect as to that, when we were talking about a compromise Board, that is, to take a part of the ring, so called, and a part of the old directors.

Q. 86. What was the discussion between you and Johnson with regard to Pearson?

A. I do n't recollect of any special discussion with regard to Pearson except that he was obnoxious to members of the old Board.

Q. 87. Was it the understanding between you and Johnson that if you took W. R. Spalding and Johnson, and Isaac Spalding, or John A. Spalding and Governor Smyth, that the balance of the Board should be made up out of the old directors, or some of their friends?

A. The understanding was that we should have such a board as was satisfactory to the Northern Road; made up of any persons that should be satisfactory to the Northern Road.

Q. 88. Was a meeting held at Boston, in General Stark's office, in accordance with the suggestion of Nathaniel White, as stated in your answer to interrogatory 7? If so, when? and state the names of all the persons who were there at that meeting?

A. Some time, I think it was in the fore part of February,

Mr. White came to General Stark's rooms, in Boston, where there was a meeting of the agents of the Vermont Central line. I do not recollect all who were there; there were quite a number; General Stark was there, and Judge Minot, B. P. Cheney, N. White, and myself, were also there. The President and Superintendents of the Vermont Central and Ogdensburg roads, and some attorneys, if I recollect right, were there, but they took no part in this matter; I do n't recall who they were. I do n't think any of them were in General Stark's room, except those I have enumerated; there was a larger room in which the business of the line was done (the Vermont Central line). General Stark, Judge Minot, B. P. Cheney, N. White and myself, were in General Stark's private room, by ourselves.

Q. 89. Was it not agreed among those present at that meeting, or some of them, either at that meeting or soon afterward, that a large quantity of Concord Railroad stock should be bought, at a price not exceeding a certain limit then fixed upon, and do you not know that Judge Minot, the next day, or soon afterward, sent word to the parties who were to buy the stock, reducing the limit, which prevented the purchase of a large number of shares that were then for sale? if so, state all you know about said transactions? state fully.

A. At the meeting referred to, Mr. Cheney or Mr. White stated that there was a lot of stock for sale in Boston, and proposed that the parties present should buy it; no price was stated as to what it could be purchased at, that I heard; after some discussion, General Stark and Judge Minot declined to have any thing to do with the purchase, and no further movement was made, so far as I know, for the purchase of Concord Railroad stock, on the part of General Stark, Judge Minot, or myself, in connection with the old Board.

Q. 90. Do you know any thing about that transaction where some parties in Boston had been employed to buy stock, and while on the point of closing the trade for a large amount, they received a telegraphic dispatch from Mr. Minot, limiting them to a certain price?

A. No; never heard of any such transaction.

Q. 91. Where was the first interview between you and Mr. Johnson, touching this business? and when was it, as near as you can state?

A. Mr. Johnson called at my office, in Boston, about the first, or in the fore part of March, I think.

Q. 92. Before you saw Johnson at this time, had you any information, or did you suspect in any way that he had been buying Concord Railroad stock?

A. On the day of the meeting, referred to before, at Gen. Stark's rooms, and after that meeting, Mr. Cheney told me

that Mr. Johnson had bought quite a lot of the stock. That is all the info—

Q. 93. Is that all the information you had upon the subject, and did you know, or have any suspicion, of Mr. Johnson's motive in buying the stock?

A. Mr. White told me that Mr. Johnson proposed to buy stock, along the latter part of February, prior to the time when he spoke to me about having this meeting in Boston, and said that his object was to change the Board of Directors. I do not recollect that Mr. White told me that he had actually purchased any stock; but I supposed, when Mr. Cheney told me he had purchased that lot of stock in Boston, that his purpose was to get control of the Concord Road.

Q. 94. Did Mr. White or Mr. Cheney or any body else, prior to your first meeting with Mr. Johnson, inform you that Mr. Johnson had associates in this business of buying Concord Railroad stock, and in his purpose of changing the Board of Directors? or did you suspect that he had such associates?

A. I do n't recollect that they informed me in relation to it, but I supposed he had associates.

Q. 95. Did you suspect any body in particular as being associated with Mr. Johnson in this enterprise? if so, whom?

A. I do n't recollect whether I knew or suspected any body, before Mr. Johnson called upon me. I should have supposed Mr. Clough might be with him, because he had been before.

Q. 96. Did you have a conversation with John E. Lyon before your first interview with Mr. Johnson in regard to Johnson's buying stock?

A. Mr. Lyon called on me a good many times, but I do n't remember any conversation with him as to Mr. Johnson's buying stock, prior to the time Mr. Johnson called on me first, at my office in the old Colony Depot.

Q. 97. Did not you have a talk with Mr. Lyon before that time in regard to Johnson's buying stock, and did n't you tell Lyon that you thought you had influence with Johnson, and that you would have a talk with Johnson?

A. No. Mr. Lyon called on me at the United States Hotel, which, I think, was after Mr. Johnson had called upon me at the Old Colony Depot, and asked me whether I had any objections to seeing Mr. Johnson, and see if some arrangements could not be made by which he would go into the old Board of Directors. I told Mr. Lyon I did n't know exactly how I stood with Mr. Johnson; he might have some old prejudice, growing out of claims for damages to potatoes, &c., and therefore I did n't know that I could have any influence with him, but I was willing to see him.

Q. 98. Did you say this to Mr. Lyon after you had seen Johnson, and he had volunteered to come and see you and tell

you how much stock he had bought, who his associates were, and what his purposes were, and after he had made his proposition to sell out his stock and influence, &c., to you?

A. I think the conversation with Mr. Lyon was after the first interview with Mr. Johnson, but I am not sure; I do not recollect the dates. The interview, I think, was immediately after the first interview with Johnson, when he simply stated to me that he had a good thing, and wanted to sell out for \$100,000; he wanted to make some money out of it; not after his full statement. He did not then tell me who his associates were, and who he proposed to make directors, and I did not then think he had stock enough to control the election of directors.

Q. 99. Did you tell Mr. Lyon, when he wanted you to see Johnson, that you had already seen him, and that he said he had a good thing, and wanted to make some money out of it, and would sell out for \$100,000? or did you intimate in any way to Mr. Lyon that you had seen Mr. Johnson upon the subject in hand?

A. I did not tell him I had seen him, nor intimate that I had, so far as I recollect.

Q. 100. Why did not you?

A. Because I am not in the habit of telling any person about my business. I did not tell any person, except the Directors of the Northern Road, that I had had interviews at any time with Mr. Johnson, so far as I recollect.

Q. 101. Was your interview with Mr. Lyon, that you have spoken of at the United States Hotel, before or after the time when you saw Mr. Johnson and Mr. Lyon together at the United States Hotel?

A. I think I saw them together there several times; I am not sure. Mr. Lyon told me that he had invited Mr. Johnson to come and see me on one occasion, or asked if he should invite him to come, but I can't say at what time it was; I can't speak of the time, for Mr. Lyon came to see me then often at the United States Hotel, during the time I boarded there.

Q. 102. Did you see Johnson and Lyon together at the United States Hotel, when the subject of Johnson's buying stock was discussed, more than once? if so, how many times?

A. I do not recollect that I did more than once.

Q. 103. Was that time when both were there together and discussed this subject, before or after Lyon told you that he had invited Johnson to come and see you, or asked leave of you to invite Johnson to come and see you?

A. I think it was after, though I did not know that, when Johnson came to see me, he had been invited by Lyon to do so. Mr. Lyon was not there when he came, and did not come with him, so far as I knew, and did not say to me after he came, that he had invited Johnson to come.

Q. 104. Was not your first interview with Mr. Johnson, upon the subject of his buying Concord Railroad stock, at the United States Hotel, and was it not brought about by Lyon?

A. No, I think not; the first was at the Old Colony Depot, I think.

Q. 105. How was the first meeting brought about between you and Johnson?

A. I have no knowledge in relation to it beyond the fact that Mr. Johnson came to my office at the Old Colony Depot.

Q. 106. Who introduced the talk that took place there in regard to Johnson's having been buying Concord Railroad stock, and in what way?

A. I do not recollect. Mr. Johnson came there, I suppose, to talk in relation to his purchase of stock, and I suppose talked about it. Mr. Shaw came in with him, or afterward, afterward I think, and told me that Mr. Johnson had come down to make a trade. I then asked Mr. Johnson if it was so; he said that he had got a good thing and wanted to make some money out of it. He said that he would sell for \$100,000. He gave me a memorandum of the stock they could control at that time, to show me that they could control the election.

Q. 107. Did Johnson hear Shaw's remark to you, or had he said anything about this business before Shaw made that remark? if so, what?

A. I do n't think Johnson did hear Shaw's remark to me. Johnson talked about his getting control of the road, but I do n't think he spoke of selling out till I asked him if he came there for that purpose, after Mr. Shaw had stated to me his object in coming there.

Q. 108. Did Johnson give you a memorandum, or did you make one from what he said?

A. I made a memorandum from his statements.

Q. 109. When he said he wanted to sell out to you, what did you say to him?

A. I told him I would consider his proposition.

Q. 110. Was that all that was said upon that subject at that time?

A. I told him it was necessary to consult with the Board of Directors of the Northern Road, before any arrangement could be concluded. This is all that I recollect.

Q. 111. Was there or not, at that time, any talk as to when you was to let him know, or give him an answer, or any thing on that subject?

A. I do n't recollect as to any time; I supposed he would come to see me again. He did, a number of times.

Q. 112. When was your next interview with Mr. Johnson, and where?

A. I don't recollect when or where. The next interview at which I took notes of what he said was at the Old Colony Depot. Memorandum "No. 2" is the memorandum made at the second meeting at the Old Colony Depot.

Q. 113. How do you account for the paper upon which that memorandum is made bearing the stamp of the United States Hotel? and was not the memorandum made at the United States Hotel, and upon paper furnished by that House to their guests?

A. I had the paper at the Depot bearing the stamp of the United States Hotel, the memorandum was made at the Old Colony Depot, at the office; it was upon paper furnished by the United States Hotel?

Q. 114. How do you know it was made at the Depot?

A. Because I recollect making it when Mr. Johnson was there at the Depot.

Q. 115. Do you remember making it upon paper bearing the stamp of the United States Hotel?

A. No; I do n't recollect in relation to that.

Q. 116. Do you remember meeting Mr. Johnson at the United States Hotel at all, and having talk with him upon this business?

A. I recollect he came there to see me several times, I think; I can't recall the number.

Q. 117. What did he say at these several times at the United States Hotel about his buying stock of the Concord Railroad?

A. I do not recollect. I did not make any note of his statements. I recollect that he showed me, or Mr. Lyon, in my presence, a bill of stock that he purchased at Henshaw's, as he said, I think it was, amounting to some 1500 shares or more, the prices varying from \$82 or \$83 per share up to \$90.

Q. 118. What business did he have or did he disclose, when he came to see you these several times at the United States Hotel? and what did it relate to?

A. It related to the contract that he proposed to make.

Q. 119. Can you tell any thing that was said or done at any of these interviews, beside the showing of the bill of stock purchased at Henshaw's?

A. I have no recollection of the details of any conversation, save those that I noted down. I recollect that he showed a bill of stock.

Q. 120. When did these interviews at the United States Hotel take place, with reference to these other interviews, at which you say you took notes?

A. I do n't know when they took place; do n't recollect at what time.

Q. 121. How do you know, then, that one of them, at

least, might not have taken place before any of these at which you took notes?

A. I do n't think they did, any of them.

Q. 122. If you do n't remember when they did take place, what enables you to tell whether they were before or after interviews at the Old Colony office?

A. The interview at the Old Colony office was the first interview, so far as I recollect, I had with him upon the subject relating to the contract.

Q. 123. Did you have any interviews with him upon the subject except at the Old Colony Depot and the United States Hotel?

A. Yes. He met me several times at the Treasurer's office of the Northern Railroad, in Boston; and at one time as I was going into Mr. Choate's office, on Washington street; he met me on the steps of the office, he and Mr. William R. Spalding.

Q. 124. Have you any recollection of specific conversations with Mr. Johnson except what appears upon the memoranda which you made at the time? if so, state what you recollect which does not appear upon the memoranda and when it was said?

A. I did n't note his proposition for a contract for \$100,000 on the first memorandum. I don't recollect the details at the various interviews. There was a great deal said about carrying out the arrangement and how it should be accomplished; what the object and purposes of the ring were; that they had got a good thing; it was worth a good deal of money; that a contract for twenty years would be worth half a million of dollars; they were entitled to 19½ per cent dividends to make up for past dividends; that the road could n't be built now for less than \$3,000,000; that the public ought to be willing to pay a dividend upon that amount and cost; that they meant to buy stock enough to control the road if they had to purchase 15,001 shares, even if they had to pay as high as \$100 per share. These remarks were made at these various interviews, I don't recollect when.

Q. 125. Do you mean to say that all you have recited in the last answer was said at one interview, or part at one time and part at another, or that you can't tell how it was said? and do you mean to say that all the matters and things that you have recited in your short answer are matters and things of which you took no memorandum, but said at interviews of which you made partial memoranda? or do you mean to say that they were things said at these interviews of some of which you took memoranda and some not?

A. I say that most of what was there stated was stated to me at the two first interviews at the Old Colony Depot; that

it was repeated at other interviews, in part, or talked about. Some of it I made notes of, and some of it I did not, at least I think I did not.

Q. 126. Will you name any thing that you have stated in your last answer but one, as having been said between you and Johnson, which was not said at the two first interviews?

A. I do n't recollect; but all I have there stated was stated at the two first interviews; I think all or most of it was stated then.

Q. 127. Was any thing said about the Clough suits at the two first interviews? if so, what?

A. I do n't think any thing was said at the first interview; I think the subject may have come up at the second interview, though I do n't recollect in regard to that.

Q. 128. What was your practice in reference to these conversations with Johnson, of which you took notes, as to the class of matters which you took a minute of in writing, and the class of matters you omitted?

A. I took a memorandum of the stock he stated they held; who held it; and of the members of the ring; and who it was proposed to make officers of the road, in order to know the strength they had and their ability to carry out their object. Also of the advantages which he stated the Concord Road possessed, the means by which they expected to make money, after paying the high rate which they were paying for the stock.

Q. 129. Upon which of your papers have you made any memorandum about what Johnson said, as to the advantages which the Concord Road possessed? the means by which they expected to make money after paying the high rates that they were paying for stock? and what have you got minuted on that subject upon any of your papers?

A. I do n't recollect upon which of the papers it is minuted, but I have minuted that 19½ per cent additional dividends can be made; that the road was worth \$3,000,000. I do not recollect whether his statement that he could make a half a million out of it is on there or not. I should say that his statement, that a contract for twenty years was worth half a million dollars to the Northern Road—the latter item I do n't think is on there or on any of them.

(Adjourned at 6 P. M. to 7 P. M.)

Since the adjournment I have made examination of these papers and do not find the two items: namely, the 19½ per cent, and the value of the road upon them. My impression was that I had noted them down, although they were of that character that I should recollect them without noting them.

Q. 130. Did you have any rule for noting these matters?

as to the class of matters you noted and the class of matters you omitted? if so, what was that rule?

A. I had no rule; I only noted down the stock and where it was held, who his associates were, whom he proposed to have for Directors, what the considerations were that induced him to purchase the stock at the high price, and matters of that kind. My object in noting them was to ascertain his strength, or his ability to carry out the contract proposed, and to know how he valued the property.

Q. 131. Will you examine your papers and see what considerations you have noted there as the inducements to Johnson to purchase the stock at the high price?

A. I did n't note down as to his inducements to purchase at the high price. I stated that I noted down what he said as to the value—probably upon some other paper as I do n't find it here. In my answer to interrogatory 130 I designed to say, instead of "what the considerations were that induced him to purchase, &c.," "what he said the considerations were, &c."—that is what I meant to be understood.

Q. 132. Do you mean to say that you have noted upon any memorandum which you took during your interviews with Johnson, any statement whatever which Mr. Johnson made in regard to the considerations which induced Mr. Johnson to buy the stock at the high price.

A. I think I have noted somewhere that he said that 19½ per cent of extra dividends or additional dividends could be made, and that the road was worth \$3,000,000, and I thought it was upon these papers, but I do n't find it here.

Q. 133. Do you think that you have noted any thing else, as to the considerations which induced him to buy the stock at the high price that Johnson said upon any paper whatever?

A. I do n't recollect of making any notes at the time Johnson was talking with me, of any thing else except what is on these papers, save as to that one point, which I supposed was on here.

Q. 134. Have you produced all the memoranda which you made of your conversations with Johnson at the time of the interview.

A. Yes; all that I can find.

Q. 135. Did you make any other memoranda at the time of such interviews? and if so, were they memoranda made at any interviews in relation to which you have produced some memoranda, or were they memoranda of conversations at interviews of which you have produced no memoranda whatever?

A. I thought there was a paper on which there was a memoranda of those two matters that I thought were on these papers, and I think there is a paper similar to these upon which that was, but I can't find it. This memoranda might have

been made at a separate and different interview, but I do n't recollect how that is.

Q. 136. Will you examine all the memoranda which you have produced, and see if there is a single word upon any of them, as to the considerations which induced Mr. Johnson to buy the stock at the high price, except one: namely, to get control of stock enough to change the Board of Directors? if so, what is it?

A. I do n't know that there is any thing else on these memoranda, except that of getting the control of the road, and the \$100,000 bonus he was to receive, unless he was to make some thing on his stock, which we were to take at \$85 per share, and to be a director of the Concord Road.

Q. 137. Have you got any minute upon these memoranda, to the effect that Johnson said to you that the reason, or one of the reasons, why he bought the stock at such high prices was, so that he could get from you \$100,000 bonus, and \$85 per share for his stock, and be a director in the road himself, outside of the general idea that he desired to change the Board of Directors? if so, will you point it out?

A. Johnson told me that he had got a good thing: that he considered the road worth one half a million of dollars more than it cost; that it would cost three millions of dollars to construct it now, and that the stockholders were entitled to nineteen and a half per cent—these statements he made to me, I suppose, to show that he had got a good thing as he had stated; but I did not note it down upon these papers here, as it seems from examining them.

(Defendant objects to the answer, as not at all responsive to the question.)

Q. 138. Do you consider your last answer responsive to the last question? and can not you give an answer to the last question more distinctly than you have done?

A. I consider it responsive, and have n't any thing more direct to give.

Q. 139. Is there any thing upon the memoranda that you have produced, to the effect that Johnson told you that his object, or one of his objects, in buying the stock at such a high price, was to get a bonus of \$100,000, from you? if so, will you point it out?

A. He did n't tell me that that was his object, but proposed to sell at that price, and that was noted upon one of these memoranda (No. 5).

Q. 140. Is the paper which you refer to, the proposition which was drawn up to be shown to the Northern Railroad Directors, and is it in Mr. Tappan's hand-writing, and not in yours? and have you got any memoranda, in your own hand-writing, of the character indicated in your last answer?

A. The paper I refer to is one of the memoranda before me, and the paper which Mr. Johnson drew up, or had drawn up, to show the directors of the Northern Railroad, and is not in my hand-writing—I can't swear to Mr. Tappan's hand-writing. I have no other memoranda of the character indicated in my last answer than that on this paper (No. 5).

Q. 141. Have you ever seen Col. Tappan write? and if so, will you state whether or not, in your opinion, the paper referred to in your last answer is in his hand-writing?

A. I have seen him write; I have no doubt this paper is in his hand-writing, because he says it is; I did n't see him write it.

Q. 142. At these various talks which you had with Mr. Johnson, did you talk any, or did he do all the talking?

A. I had no occasion to talk much, because I agreed to accept, so far as I was concerned, Mr. Johnson's proposition. The principal talk was to see how he could carry it out, or bring it around.

Q. 143. You have enumerated a good many things that Mr. Johnson said; did you assent or dissent to any of the propositions which he laid down? if so, what propositions did you assent to, and what dissent from?

A. There were only three of these propositions or statements that particularly interested me, if we made the contract that he proposed; it was first, the saving that could be made in operating the roads together, as he represented; the amount to be paid for the stock, and the amount of stock to be taken; and the bonus to be paid. I assented to the \$100,000 proposed; I told him that perhaps the estimate of saving by working the two roads together might be large, and had some discussion in regard to the amount of stock to be taken and the price to be paid; but neither assented or dissented from his statements with regard to the extra dividends to be paid, nor to the value of the road, because those would n't affect us if we made the contract.

Q. 144. What caused you to remember statements of Johnson in which you were not interested, and of which you made no minutes; and do you remember whether you did or did not make any reply to statements of that character made by Johnson?

A. I stated these statements of Mr. Johnson to my directors as an inducement for them to enter into the contract which Mr. Johnson had proposed. I do n't recollect as to any reply, but I do n't think I entered into any discussion with him about them, as they were not matters that called for any discussion with him while the negotiations were going on.

Q. 145. Did Johnson or you first suggest the idea of having the Northern Road run the Concord Road for twenty years?

A. Mr. Johnson proposed to make a contract with the

Northern Road, by which that road should have a contract with the Concord Road, or control of it, upon payment of \$100,000, and taking a certain amount of stock.

Q. 146. Did Johnson first suggest the length of time which that contract should run—twenty years—or did you?

A. I do n't recollect with regard to that. I think it was Mr. Johnson.

Q. 147. How did Mr. Johnson find out that you wanted such a contract for that length of time if you never suggested any thing of the kind?

A. I presume Mr. Johnson knew that we were negotiating, or making contracts with other parties, for that length of time.

Q. 148. Were you doing a general business at that time, or was the Northern Road doing a general business, in the way of taking leases of railroads for twenty years? and do you think Mr. Johnson was informed of that fact?

A. I think Mr. Johnson knew that we had just made a contract with the Vermont Central Road for a period of twenty years, and that the Vermont Central and Vermont & Canada Roads had leased the Ogdensburgh & Lake Champlain Railroad for a period of twenty years, and that the Northern Road was negotiating a contract with the Nashua & Lowell, and Boston & Lowell roads for the same length of time, and that we wanted a contract of some kind with the Concord Road.

Q. 149. Were any of these contracts, so far as the Northern Road was concerned, any thing more than mere contracts as to railroad connections, and in regard to the terms upon which the respective railroads would transport freight and passengers? and were any of them leases by the terms of which the Northern Railroad was to take possession of and run another railroad?

A. The contract between the Vermont Central and Vermont & Canada, and the Ogdensburgh & Lake Champlain Road was a lease to which the Northern Road was a party to some extent, as I have before stated in this deposition. The others were business contracts for the transportation of passengers and freight.

Q. 150. Was any other length of time talked about between you and Johnson that this contract should run, other than twenty years?

A. I do n't recollect there was.

Q. 151. Did you consult more than once with your Directors as to this contemplated trade with Johnson? if so, how many times?

A. I had several interviews with them unofficially, but I do n't remember the number of times.

Q. 152. Did you ever consult with them at all in relation to this trade with Johnson, at any meeting of the Board? if so, when and where, and who of the Board were present?

A. I do n't think there was any formal meeting of the Board, at which this subject was considered.

Q. 153. What members of your Board did you consult in any way, and how, in regard to this contemplated trade with Johnson?

A. I consulted with Mr. Crocker, Mr. Daniell, Judge Minot, Mr. Nesmith. Mr. Daniell and Mr. Crocker, at the Treasurer's Office of the Northern Road, in Boston, and Judge Minot there and elsewhere; Mr. Nesmith, I think, here. My chief talk was with the Directors, in Boston—Mr. Crocker and Mr. Daniell.

Q. 154. Did these four Directors whom you consulted, desire you, or conclude that you had better make the contemplated trade with Johnson, and did you or not consult the remaining members of your Board, and who are they, and how many more were there?

A. There were two, beside those that I have enumerated, Mr. Burnham and Mr. Clark, who were then, and now are, in Europe, or out of the country, I suppose. When I first presented the subject to Messrs. Crocker and Daniell, they objected to making any arrangement of the kind; but when I showed them what I thought would be the position of things, if they did not accede to the terms proposed by Mr. Johnson, they consented to the proposed arrangement; Mr. Minot did not agree to the arrangement; Judge Nesmith said he would agree to what the other members of the Board thought best.

Q. 155. Who did Johnson say to you were the other parties that wanted to buy the stock he had been purchasing in the Concord Railroad?

A. He did n't tell me who they were.

Q. 156. Did that create any apprehensions in your mind, or did you ask him who it was that wanted to buy, or had you any suspicion who it was that wanted to buy, or did you believe Johnson's statement that there was a party desirous of buying in the manner you have stated?

A. I supposed it was either the Boston & Maine Railroad, or the Boston & Lowell and Nashua & Lowell and Vermont Central Roads that he referred to, but I did not ask him. I supposed he had talk with parties in relation to the subject, and that he made that statement to me to show that others would take it on the same terms if we did n't take it.

Q. 157. Did you ever show the proposition which was drawn up in Mr. Tappan's hand-writing (No. 5) to your Directors? if so, to which ones of them?

A. I had it before the Directors at the Northern Railroad

office when Crocker, Daniell & Minot were there, and it was talked over. I do n't recollect of showing this exact paper to Mr. Nesmith. I stated the substance to him.

Q. 158. Who sent for Mr. Tappan when he was present at the Old Colony Railroad office and drew up this paper (No. 5)?

A. I do n't recollect who sent for him, but I think I telegraphed to Judge Minot to come down and bring Tappan down, as he was the counsel of Clough, so that the paper could be prepared satisfactorily to Clough.

Q. 159. Who was to furnish the \$100,000 bonus which was to be paid Johnson? and who was to buy the stock and pay for it?

A. The Northern Road were to pay the \$100,000, and was to take from 3000 to 4000 shares of the stock belonging to the ring, at \$85 per share, when the contract was completed.

Q. 160. Did you assent to Johnson's proposition to discharge Clough?

A. I told Mr. Johnson that I had no interest in that; I did not care what might be done with it. The matter occurred prior to the time the contract was to take effect, and the proceeds would n't affect us, whether he paid it or not. At one time I agreed to allow \$10,000 more—that is the \$100,000, and \$10,000 on account of the suit, which was to be paid Clough, as I supposed, in case judgments were obtained against him.

Q. 161. Will you read paper No. 4 and state whose handwriting it is in, and what it was drawn up for, and when it was drawn up, and explain such items as need explanation?

A. I wrote this as Mr. Johnson proposed. I do n't know that I can make any explanation of it, the paper explains itself. I do n't recollect when it was drawn up; it was at one of the interviews at the Old Colony Depot and not far from the time when the memorandum drawn up by Mr. Tappan was made—very near that time.

Q. 162. Is it a memorandum of what you agreed to with Johnson, or not?

A. It is a memorandum of what Mr. Johnson proposed to do, at the time this memorandum was made. It is substantially what I agreed to with him; it is about the same thing as the other.

Q. 162. What was said by Mr. Johnson in regard to the objections of his associates to the proposition of buying their stock, as to the time of receiving their pay, etc.

A. I do n't think any thing was said by him as to the time of paying for the stock; I have no recollections of it. He said the reason he could n't carry out the contract, or agree-

ment, was because the \$100,000 was not to be paid till the contract was completed.

Q. 163. What new arrangement, if any, did you make with Johnson as to paying the \$100,000 bonus?

A. I told him I would waive in part that condition, and let him draw for \$25,000 or \$50,000: I don't remember which the amount was; but whichever he wanted, holding his check, guaranteed by William R. Spalding, as security, till the contract was completed, as he wanted that amount of money to pay some of the parties connected with the ring.

Q. 164. Did n't you authorize him to draw for \$50,000, to be used by him in satisfying a portion of his associates as to their share of the bonus, without any stipulation or agreement, that he was to pay it back to you in any event whatever; and was or was not William R. Spalding present with Mr. Johnson when this arrangement for Mr. Johnson to draw \$50,000 was made?

A. No; he was to be responsible for it, and Mr. William R. Spalding agreed to indorse for him, as I understood Mr. Johnson to say. Mr. Spalding was in the office, I think, at the time, as also Mr. Crocker, the Treasurer of the Northern Road, and Mr. Parker, the treasurer's clerk; I think we were all in the office at the time.

Q. 165. How many times did you see William R. Spalding with Mr. Johnson, while these negotiations with Johnson were being made? did you see him on one day only?

A. He was at the office when I was there, two or three times — I don't know which — with Mr. Johnson, at different days.

Q. 166. Did you arrange for money to carry out your contemplated trade with Johnson? if so, where, and with what banks did you make arrangements?

A. No; I did n't make any arrangement with Mr. Johnson; I told Mr. Johnson it would take some little time to arrange for the money to pay for the stock; Mr. Johnson said that he could accommodate us with \$50,000 at one bank in Manchester, and \$50,000 at another bank in Manchester, till the first of June, at six per cent interest, and \$35,000 at his bank in Concord; said they had arranged for the money to carry the stock, and so much of the amount required to pay for the stock that was taken, could lay till the first of June, as he had stated.

Q. 167. Did you authorize or request Mr. Johnson to engage a loan for you at any bank? If so, did he report to you that he had engaged any loans for you or not?

A. No; and he never reported to me that he had made any loans for me.

Q. 168. Did you ever authorize Mr. Johnson, or any body else, to inquire at the Amoskeag Banks, in Manchester, whether

or not you could have a loan of a hundred thousand dollars there, and were you informed that you could have it, or did you get any information in any way that you could have such a loan there? and where did you expect to raise the money to pay the bonus which you contemplated to pay, and to pay for the stock?

A. No, I have not the slightest recollection of authorizing Mr. Johnson, or any body else, to make any inquiry for money at Manchester for me. I had no information in relation to it from any one, except what I have stated in relation to what Mr. Johnson stated that he could provide, as I before stated. We had the means to pay the bonus and for the stock—it would take a little time to turn it, as I stated to Mr. Johnson.

Q. 169. In what shape were those means, and how much time would you probably want to turn it, and was it or not probable that you would want a loan from the bank, in order to carry out your contemplated trade with Johnson?

A. They were in notes, and stocks, and government bonds. It would not take long to turn them—a short time. We should probably have borrowed something from the banks.

Q. 170. Did you or not give Mr. Johnson to understand that you should want the money, which you say he said he could furnish you with at the banks in Manchester, and at his bank in Concord?

A. The understanding that Mr. Johnson gave me, was, that part of this stock, which we were to take, was in these banks, and could lay there till June first, if I would pay 6 per cent interest upon what was in the banks in Manchester, and 7 per cent on the stock in the bank in Concord. I did n't give Mr. Johnson any understanding in relation to it, because there was no arrangement completed; that was part of his proposition to me that he would find so much money till the first of June, if the contract was carried out; that is, hold so much of the stock.

Q. 171. Did you rely upon that stock, so lying in the banks, you paying therefor 6 per cent, in case you made the contemplated trade with Johnson, or not?

A. I presumed I should take the stock if Mr. Johnson required it. It is not a matter I cared any thing about. I presumed he would let the stock lie there till the first of June, and then deliver the stock according to the contract.

Q. 172. Did you expect, when you made the contract of April 29, 1870, that the old Board of Directors of the Concord Railroad would be re-elected at the then approaching annual meeting of the corporation?

A. I thought there was a chance for them, as I did not suppose the ring had more than 10,000 shares of stock under their control; but I thought it doubtful.

Q. 173. Did you think it probable that the board which was elected would be elected?

A. I thought there was a chance for them also to be elected; I did not think it quite certain.

Q. 174. Was it or not one of the objects which you had in making the contract of April 29, 1870, to prevent the Concord Railroad and its branches from coming under the control and management of the present board of Concord Railroad Directors?

A. No.

Q. 175. Had you no objection to the Concord Railroad coming under the control of the present Board of Concord Railroad Directors?

A. I should not have, if they did not come there as speculators.

Q. 176. Did you understand, when you made the contract of April 29, 1870, that if the persons constituting the present Board of Directors of the Concord Railroad, were elected, and came into the control and management of the road, they would come in as speculators; or did n't you believe any such thing?

A. I supposed, from the prices they were paying for the stock, and the proposals they had made for a contract for the road, that they were speculators.

Q. 177. Will you say then whether or not when you made the contract of April 29, 1870, you had objections to having the persons who are now Directors of the Concord Railroad come into the control and management of the road?

A. I did not think they would promote the interest of the Concord Road or the public, and therefore preferred the old Board.

Q. 178. Do you mean to say in your last answer that you had objections to the persons who now constitute the present Board of Directors, or that you had not?

A. I mean to say that I have no objections to the persons constituting the present Board, but I have objections to the road's being used for speculative purposes.

Q. 179. Will you say whether or not you had any objections to the persons constituting the present Board of Directors of the Concord Railroad coming into the control and management of the road, actuated by the motives and purposes with which you, on the 29th of April, 1870, believed they were actuated?

A. My reply is that I have no objections to the gentlemen composing the Board of Directors of the Concord Railroad as men, but should object to them as Directors, when under the influence of speculative motives, as I thought they were at the time of the annual meeting, and therefore voted for the old Board.

Q. 180. Had you, at the time you made the contract of April 29, 1870, any objections to having the Concord Railroad come under the control and management of the persons constituting its present Board of Directors, as you then understood their motives and purposes?

A. I preferred that the old Board of Directors should be retained rather than that a new Board should be elected.

Q. 181. Do you refuse to say whether you had objections, or had not objections, on the 29th of April, 1870, to having the Concord Railroad come under the control and management of the persons constituting its present Board of Directors, as you then understood their motives and purposes?

A. No.

Q. 182. Will you then say whether you had or had not objections?

A. Yes, I have already stated that I had objections, if they were to come in as speculators, but I had no objections to them as men, and should not object to their being Directors of the Concord Railroad, if the road was to be managed by them for the best interests of the road and the public.

Q. 183. The question is whether you had objections to the men as you then understood their views, and do you mean to say that you had or had not objections to them, as you then understood their views?

A. I mean to say that I have no objections to them as gentlemen, but I do object, and should at all times object, and have objected, to their acting as Directors of the Concord Railroad in a speculative capacity.

Q. 184. Did you then have objection to them as you then understood their views?

A. I did n't understand their views. I had no knowledge of what their views were, from them, but I supposed they were speculative, and therefore should object to them. I do n't know what I thought of them at that time.

Q. 185. How long, after your negotiations with Johnson blew up, was it, before you began negotiating for the contract which bears date the 29th of April, 1870?

A. I do n't recollect—but not very long.

Q. 186. About how long?

A. I can't say.

Q. 187. Can you give no idea of the time, whether it was one day, one week, or one month?

A. I do n't recollect—it was but a short time.

Q. 188. Was it a week?

A. I do n't recollect.

Q. 189. Was it two weeks?

A. I do n't recollect the time—it was but a short time.

Q. 190. Have you no impression whether or not it was as long as two weeks?

A. I do n't recollect the time—it was not a very long time.

Q. 191. Do you refuse to give your impression as to the length of time, as inquired of in the last question?

A. I do n't know how long it was—it was but a short time. it is the only recollection I have in regard to it.

Q. 192. Have you no impression as to how short a time this was? whether it was as short as one week or short as one month?

A. I have no recollection as to the exact length of time—it was but a short time—that is my impression.

Q. 193. Do you refuse to answer the last question?

A. No. I have answered it according to the best of my knowledge.

Q. 194. Well; do you mean to say that you can't tell whether it was a month?

A. I do n't care to be trifled with in this way. You know that the time when the negotiations with Mr. Johnson broke off was in the last of March, and the time when the contract was made was on the 29th of April, and that there was n't a month, or scarcely a month between them. I do n't think it is profitable for me to remain here answering such trifling questions as these.

Q. 195. Will you be kind enough to tell us what you know about the inquiry made of you, without informing counsel who are interrogating you as to what they know? and if you have any impression as to how short a time it was after you got through with your negotiations with Mr. Johnson before negotiations were commenced between you and Mr. Minot, which terminated in the contract of April 29, 1870, will you be kind enough to give us that impression just as it lies in your mind?

A. I do n't recollect just how long it was, other than it was a short time, and I have no other impression than that.

Q. 196. How long were the negotiations pending for the contract of April 29, 1870, prior to the date of it?

A. I do n't recollect, but were from shortly after the negotiations of Mr. Johnson fell through.

Q. 197. Who first suggested the making of the contract, you or Mr. Minot?

A. I think I did; I am not sure.

Q. 198. Were you actuated by the same objects in seeking to obtain, with Mr. Minot, the contract of April 29, 1870, which you had in seeking to obtain the arrangement with Mr. Johnson? or were they different?

A. The objects were substantially the same.

Q. 199. Have you not stated that the reason why you

sought to make the arrangement with Johnson, and were willing to pay him a bonus of \$100,000, and pay an exorbitant price for a large amount of Concord Railroad stock was because you were afraid of the Board of Directors which the ring, as you call them, were going to elect; that that Board of Directors would be governed by speculative purposes; that the Concord Directors would have it in their power to ruin the business of the Northern Railroad, and that you feared that they would do so, and that you preferred to pay the \$100,000 bonus and the exorbitant price for the stock rather than to let the ring elect their Board of Directors? and that you thought that in so doing you were promoting the interests of the Northern Railroad and the public?

A. I have stated that I feared that if a Board of Directors should be elected who were speculators, that they might injure the interests I represented, and advised the directors of the Northern Road to agree to the contract proposed by Mr. Johnson, believing it would be better for them and the public, than to risk it if the road was in the hands of speculators. I have answered the question as fully as I can.

Q. 200. Have you said the things that the last question inquires of you for?

A. I do n't recollect in relation to all of them; I think the answer of mine covers most of them.

Q. 201. Is there any thing indicated in that question, which you have not said? if so, what is it?

A. I do n't recollect whether there is any thing. The most of the things I think I represented to my Board of Directors as reasons for making the contract. I do n't think I represented them in the same form of language as is made use of in the question.

Q. 202. Was that, in point of fact, the reason why you desired to make the trade which you attempted to make with Mr. Johnson?

A. That was only a part of the reason why I wished to make the contract with Mr. Johnson. The character of the ring and their purposes, as I understood them from Mr. Johnson, was the reason why I was willing to pay the bonus and the extra price for the stock; and the reasons I used to influence the Directors to consent to it. The other reasons for a contract of that kind were the same that I had for making the contract of April 29, 1870, now in controversy.

Q. 203. Did not the character of the ring and their purposes, as you understood them from Mr. Johnson, appear as alarming to you when you made the contract with Mr. Minot, on the 29th of April, 1870, as they did when you were trying to make the arrangement with Mr. Johnson?

A. There was no difference in my thoughts, whenever I

thought of the ring, from the time of my negotiations with Mr. Johnson to the time of making the contract of April 29, 1870.

Q. 204. How did you apprehend that the ring was going to affect you? that is, how were they going to get into a position to affect you?

(Objected to, it being now quarter to one o'clock at night, and necessary to close this deposition at this sitting. Counsel for plaintiff objects to this interrogatory, because it asks for information that has been substantially given, over and over again in the course of the examination.)

A. If they were directors of the Concord Road, they could increase the rates upon us, cut us off from depot accommodations, from train facilities, decline to haul the trains of the Vermont Central Road in such a manner as to continue the business over the road.

Q. 205. Had n't you as much reason to apprehend that the ring would be directors of the Concord Railroad, when you commenced, and were carrying on the negotiations for the contract of April 29, 1870, as you had when you were negotiating with Mr. Johnson?

A. I had about the same. I was in doubt at either time, or at both times; I thought the chances were in favor of the ring.

Q. 206. Have you diminished your help since this contract of April 29, 1870? and if so, to what extent?

A. No; it has been increased. We always increase the help in the summer months.

Q. 207. Have you got the same superintendents and cashiers, etc., as were kept before, when the two roads were run separately?

A. We have the same superintendents; but one cashier.

Q. 208. Have n't you got the same men, then, that were in the employ of the road before as cashiers, and if so, are they differently employed? Have you the same number of masters of transportation, freight agents, conductors, and officers generally, as before?

A. Yes.

Q. 209. Do you keep separate accounts of the earnings of said roads, and of the branches of said Concord road?

A. The accounts are all kept under one head, that of the Concord and Northern Railroad; but each department, and the accounts of each branch road, are kept so that we can show the income and expense of each, separately.

Q. 210. Has the joint management got a place of deposit for their funds? if so, where is it?

A. Their funds are deposited with the Treasurer of the Northern Railroad, in Boston.

Q. 211. At the time Mr. Tappan came to you on the

Friday before the annual meeting, with a proposition which he said came from Mr. Johnson, did you, when you declined that proposition, tell Mr. Tappan to tell Mr. Johnson that you would carry out the original proposition between you and Johnson to pay a bonus of \$100,000, and to take the stock at \$85 per share?

A. I think when Mr. Tappan came to me, as he said; I think, both from Mr. Johnson and Mr. Clough, I said to him that I was willing still to accede to his proposition, made in Boston; that he might still so say to Mr. Johnson—I mean the proposition he made then in Boston.

Q. 212. What was that proposition you refer to as made in Boston?

A. The one contained in "Paper 5."

Q. 213. How many miles of railroad has the Northern Railroad and its branches? and how many miles of railroad has the Concord Railroad and its branches? and what is the capital stock of all these railroads?

A. There is about one hundred and forty miles of road in the Concord Road, and roads with which it is connected. The capital stock of all these roads is about \$3,300,000. The length of the Northern Road and branches, and roads controlled by it, is about one hundred and thirty-five miles. The cost of these roads is about \$5,000,000—I mean the Northern Road and its branches, and roads controlled by it. I have no data to give a correct account of the cost of the roads, or their present value.

Q. 214. What is the present number of employees which you have upon the Concord Railroad and its connecting railroads; and what is the number that you have upon the Northern Railroad and its connecting railroads?

A. I do not know the number now employed. There was about 700 on the Concord Railroad and connecting roads, in May last, when I had a memorandum of them, and probably about 500 men on the Northern Road and its branches, with the work it is doing. I have not counted up the men on the pay-rolls.

Q. 215. Was there a notice served upon you of the choice of the new Directors and the repudiation of the new contract by the corporation, and a demand made upon you for all the property of the Concord Railroad and its branches and connecting roads, immediately after the annual election of the Concord Railroad Corporation, in May last?

A. I do not recollect about the first two questions. I recollect they served a demand upon me for the property of the road, to which I made reply.

(Direct-examination resumed.)

Q. 216. State whether or not you have made any arrangement or agreement with Mr. Lyon, with regard to reductions to be made on the business of the Montreal Road over the Concord, in case the joint operation of the Concord and Northern roads shall be continued, as provided for in the contract of April 29?

A. I agreed to carry his freight and passengers on the same terms as those proposed to Burke and Johnson (a Committee of the Directors of the Concord Road), in June last: Passengers, .01½; first class freight, .03½; second class freight, .02½; third class freight, .02, per passenger, or per ton, per mile.

Q. 217. Whether or not these reductions on passengers and freight were satisfactory to Mr. Lyon?

A. He expressed himself as satisfied with them.

Q. 218. When was this arrangement made with Mr. Lyon, as near as you can state?

A. It was after the proposition I have referred to, made with a Committee of the Concord Road, not far from that time.

Q. 219. State whether or not you would have made the contract of April 29, if you had the opportunity, even if there had been no new movement to get control of the Concord Road?

A. Yes.

(Cross-examination resumed.)

Q. 220. Have you had any recent negotiations with any body representing the Concord Railroad, in reference to an arrangement of the pending difficulties? if so, with whom?

A. Mr. Tower, of Boston, has called on me two or three times.

Q. 221. For what purpose?

A. I suppose he came for the purpose of seeing if he could make any arrangement. Mr. Tower said he came on his own account; it was a private matter of his; he wished it so understood; he did n't speak in behalf of the Board.

ONSLOW STEARNS.

(Deposition closed at 2 A. M.)

J. W. JOHNSON. MEMORANDUM—STOCK LIST.

Copy of Paper No. 1.

(The original is written with pencil.)

	85	
2500	7	
	<hr/>	
	595	
	500	
	<hr/>	
	95	
Clough,	1122	
Johnson,	1250	
Spalding,	1000	
Spalding,	1500	Control—
Smyth,	1200	1200
Currier & Hill,	1000	1000
Pearson,	1000	1000
	<hr/>	<hr/>
		3200
Marshall,	250	
	<hr/>	
	8322	
Sundry,	300	
	<hr/>	
	8622	
John L. Tallant,	200	

Copy of Paper No. 2.

(The original is written in ink.)

Says he has bought and ——— several hundred shares for persons whose stock he can have—did not buy any from friends—bought all from those who were the friends of the old board—with what they own can control at least 12,000 shares—will buy, if necessary, at \$100, enough to control the road.

Johnson,	700	at 70
do.	500	" 85
Smyth,	1000	" 85
Pearson,	1000	" 85
Currier & Hill,	1000	" 85
Another person about	500	" 85
Clough,	1122	
Edward Spalding		
in his Bank,	500	
Spalding's own,	1000	
do. control,	1000	
Anson S. Marshall,	200	
	<hr/>	
	7922	

Head is willing to take 1000
shares—has \$30,000 now
on deposit.

3000 or 4000 at \$85.

10 in Ring—9 fixed upon—10th to be either John L. Tallant, Natt Head or James R. Hill.

Johnson,	Currier, Treas.	Real Board—Smyth, Pres't,
Pearson,	Marshall, Clerk.	Johnson,
Smyth,		Pearson,
Hill,		Hill,
Edward Spalding,		Wm. R. Spalding,
Isaac Spalding.		John Spalding.

other to be chosen among the three.

Copy of Paper No. 3.

(Original is written with pencil.)

Mr. Smyth will keep 1000 shares and go into the board, or sell at \$90, and work for the company out of the board. The question to be decided before the board is made up.

Wm. R. Spalding, of Lawrence, to be Director either in the M. & L. or Concord Road. Isaac Spalding to be Director in the Concord R. R., and to be President, and resign forthwith. The Spaldings to carry 2000 shares; J. W. Johnson to carry 1500 shares, and to be Director in Concord Road, but prefers Northern.

To buy	1120	shares of	Clough.	
"	"	1200	"	Currier & Hill.
"	"	1000	"	Ring.
"	"	200	"	John Kimball.
"	"	200	"	Marshall.
<hr/>				
	3720			
	1500	Johnson.	Smyth.	
	2000	Spalding.	Johnson.	
<hr/>				
	7220			
	500	White.	Spalding.	
	1000	Cheney controls.	Minot.	
<hr/>				
	8720			
	1000	Smyth.		
<hr/>				
	9720			

Clough, Currier & Hill,	1120 shares at \$85—\$	95,200—half cash,	\$45,200—note 8 mos.	\$50,000
	1200 "	85—\$102,000—	"	52,000—bal. 8 mos. 50,000
Ring, Kimball, Marshall,	1000 "	85—\$	85,000—	50,000—bal. 8 mos. 85,000
	200 "	85—\$	17,000—	17,000
	200 "	85—\$	17,000—	17,000
<hr/>				
	3720	\$816,200	\$181,200	
	Bonus,	100,000	Cash,	87,200
<hr/>				
		\$416,200	\$218,400	\$62,800
			197,800	\$197,800
<hr/>				
		\$316,200	\$416,200	
<hr/>				
	Coat, \$416,200			
	8720 shares at \$75	279,000		
<hr/>				
	18,600	\$187,200		
	26,040	18,600		
<hr/>				
	\$279,000	\$118,600		
<hr/>				
	3720			
	5			
<hr/>				
	\$18,600			

JOHNSON.

Copy of Paper No. 4.

(Original written with ink.)

To pay for 3500 shares at \$85, within a month, and have all dividends hereafter declared on the shares.

To take, if required, 2,000 shares more, to be paid for on the last Tuesday but one in May, at \$85 per share, with all dividends hereafter declared on the same, and pay interest on \$85 per share, at the rate of seven per cent from April 1, under certain circumstances.

To take, if required, 1000 shares more at \$85, now belonging to certain parties, on the last Tuesday but one in May, under certain circumstances.

To loan \$25,000 now, and pay \$100,000 on the last Tuesday but one in May, on certain conditions.

All the stock now held by the ring shall be represented at the annual meeting, and be cast in favor of a lease or business connection between the Northern and Concord roads, in which the Northern Railroad shall guarantee to the stockholders of the Concord Road a dividend of not less than ten per cent per annum, and all suits against conductors to be discontinued, except the one against Clough, and in his case, \$10,000 to be deducted from the judgment, or paid to him in case of judgment for that amount or more.

No consolidation during the lease or business arrangement.

(The following, written in pencil, is on same paper.)

Has more stock than he told me.

Given Pearson one package of 650 shares.

B. & M. nothing to do with the ring. One year ago or more they agreed to furnish all the money wanted to carry the road, for their share of the business.

It is understood that we pay so much for the control of the stock.

Neither Pearson or Minot to go into the Board—if compromised. Stark said if B. & M. was not in it he would not do any thing to help Minot.

Copy of Paper No. 5.

(Original written with ink.)

1. To buy not exceeding 7750 shares, at \$85 per share, to be paid presently; the present owners of said shares hereby agreeing to use their influence and votes in favor of the contract hereinafter mentioned.

2. A business contract to be made between the roads.

3. When such contract shall be made and completed, an additional sum of one hundred thousand dollars to be paid in full for the balance of the price of said stock.

4. The purchasers to indemnify George Clough against the suit now pending against him in favor of Concord Railroad, so that the same be entered *neither party*, without any judgment in the same.

5. The Northern Road to pass a vote in substance that the President be a Committee to make a business contract with the Concord Road upon such terms as he may deem for the interest of his Corporation, and to make such arrangements for that purpose as he may deem expedient.

[Written in Mr. Stearns' hand-writing with pencil, at bottom.]

"Mr. Johnson is to take care of 4000 of the above 7750 shares, and so stated in presence of M. W. Tappan, but desires this proposition to be for the 7750, for private considerations.

Mr. Johnson made this proposition March 25, '70, and it was assented to by Judge Minot and O. Stearns."

I, ISAAC SPALDING, of Nashua, county of Hillsborough and State of New-Hampshire, do depose, testify and say, in answer to interrogatories proposed, as follows :

(Interrogatories proposed by John Y. Mugridge, counsel for plaintiff.)

Q. 1. Do you hold any office at the present time in connection with the Concord Railroad? if so, what, and when were you elected thereto?

A. I am President of the road, and was elected last May.

Q. How much stock did you own in the Concord Road at the last meeting, and how many did you vote on at said meeting?

A. Five hundred shares.

Q. 3. Did you make any purchases of stock immediately anterior to said meeting? and if so, how much?

A. I did—300 shares.

Q. 4. Of whom did you purchase said 300 shares of stock?

A. Edward H. Spalding.

Q. 5. How is he related to you? if any way?

A. He is my nephew.

Q. 6. When did you purchase said 300 shares, and where were they transferred to you?

A. On the morning of the meeting I purchased them. I do n't recollect the date of the transfer, but I think before the date of the meeting.

Q. 7. How long before the opening of the meeting did you purchase said shares?

A. The meeting was opened when I purchased them.

Q. 8. How long had the meeting been opened at the time you purchased them?

A. I can't say, it was during the early part of the meeting.

Q. 9. How long, as near as you can state, was it before the vote for the choice of directors was taken?

A. I can't tell what time, but Mr. Marshall and Mr. Butler had made speeches, I think, before the purchase.

Q. 10. Where were you at the time you made the purchase—in what place?

A. In the hall, where the meeting was being held.

Q. 11. Was any other person present when you made such purchase, beside said E. W. Spalding?

A. Yes; the hall was full.

Q. 12. I mean in the immediate presence of yourself and E. H. Spalding; who were cognizant of the trade?

A. I do n't know as any one heard it; but several might have done so if they had listened.

Q. 13. Were said 300 shares of stock at that time transferred to you?

A. Yes, sir.

Q. 14. Have you the certificate of said shares, then transferred to you, and will you produce the same, that a copy thereof may be annexed to this deposition?

A. I have not got it.

Q. 15. Did you ever have said certificate?

A. I did—think the date was sometime before this.

Q. 16. Was said certificate delivered to you that morning by Mr. E. H. Spalding?

A. It was.

Q. 17. What has become of it?

A. I do not know.

Q. 18. What did you do with it after you received it?

A. I kept it: I do not know how long—less than a month. I had given a check for the money. I took back my check that I gave for the stock, and returned the certificate.

Q. 19. Did you return the certificate to E. H. Spalding? if not, to whom did you give it?

A. No; I gave it to John A. Spalding, as he had my check.

Q. 20. To whom did you give the check originally, in payment of said stock? and in whose favor was said check drawn?

A. The check was given to John A. Spalding, and drawn in his favor, as I think, and payable to bearer.

Q. 21. Did you draw said check, while in the annual meeting aforesaid?

A. Not in the meeting. I think I stepped out of the meeting to do it, as there was no pen and ink in the meeting.

Q. 22. Is John A. Spalding the person to whom you gave the check, a relative of yours, and cashier of the First National Bank of Nashua?

A. He is.

Q. 23. Did said check remain in his hands unrepresented and undrawn until you returned to him said certificate of 300 shares aforesaid?

A. I do not know where the check was during the time.

Q. 24. So far as you know, had said check been presented for payment till you returned said certificate?

A. I do n't know that it was.

Q. 25. Was it agreed by you and said E. H. Spalding, that it should not be presented for payment, but should remain in the hands of John A. Spalding till you should return said certificate?

A. There never was any agreement about it, that I know of. I had the stock and they had the check.

Q. 26. Can you give any reason why said checks were not presented for payment?

A. I can not.

Q. 27. You have before stated that the certificate of 300

shares given you was dated before the day of its purchase, on the day of the annual meeting. How long before the day of its purchase was it so dated?

A. I can't say.

Q. 28. State as nearly as you are able?

A. I can't state the number of days; it was several days.

Q. 29. Was the transfer of said stock from E. H. Spalding to you entered upon the books of said company?

A. I do n't know.

Q. 30. Did you ever have said transfer so entered, or take any steps in that direction?

A. Not any; the certificate was brought to me in my own name, and I gave a check for it.

Q. 31. Did you ever request any person in your behalf to see whether said transfer was made, or had been made, to you on the books?

A. No; I supposed if I had the certificate it would be sufficient.

Q. 32. When you gave up said stock, did you transfer it to any person by a new certificate or transfer in any way? if so, to whom?

A. I signed my name on the back—that is a transfer to any body.

Q. 33. Did you transfer the same to any particular person, or intend to do so? if so, to whom?

A. Not any body—only signed my name on the back.

Q. 34. Was the only consideration for the transfer of said stock by you, as aforesaid, the surrender of the check given by you in payment of the stock, as aforesaid?

A. That was all.

Q. 35. What was the date of the transfer of said three hundred shares, as aforesaid, as near as you can state it?

A. I do n't know, as I have before stated—it was within a month—the date was blank; I just signed my name.

Q. 36. State as nearly as you can the time when you transferred said stock? give the month, if not the day of the month?

A. June was the month.

Q. 37. Was it the first or the latter part of the month of June?

A. I can't say.

Q. 38. Have you no impression on the subject? if so state it.

A. I have none, only that it was in June; it might have been the latter half, perhaps later, I can't tell.

Q. 39. Will you state positively that it was not in the month of May?

A. I will.

Q. 40. What was the amount of the check drawn by you for the stock?

A. I think it was par—fifteen thousand dollars—but I am not sure.

Q. 41. Was the stock put in to you at \$50 per share, in this transaction?

A. I think it was, but am not sure; that is my impression.

Q. 42. How soon after the delivery of the certificate to you did you deliver the check?

A. I delivered the check immediately, as soon as I could draw it there.

Q. 43. Had you not, previously to said annual meeting, stated to various persons that you had not and did not intend to make any purchases of Concord Railroad stock?

A. I might have said that I had not; do n't think I said that I would not.

Q. 44. Had you at any time previous to the receipt of said certificate of said E. H. Spalding had any negotiations about the purchase of 300 shares of said stock?

A. He had asked me, some time before, whether I was willing to take some stock, and I made no objection to taking it at par value.

Q. 45. Had you at any time previous to the receipt of the certificate of 300 shares of the stock, as aforesaid, had any negotiations with him as to the purchase of that particular stock, or any specific number of shares?

A. Had not.

Q. 46. Had you, previous to the receipt of said certificate, had any expectation of purchasing said 300 shares?

A. I can't say that I had, but I was willing to take it at par.

Q. 47. How long were you occupied in the negotiations had between you at the time you received said certificates of said stock?

A. A very short time indeed.

Q. 48. Do you think all of said negotiations took five minutes?

A. I do n't think they did.

Q. 49. Who introduced the subject?

A. Edward brought the certificate to me, and wanted to sell it to me, and I bought it.

Q. 50. Had said certificate previously been made out in your name?

A. It was made out to me then, as I stated before; it was antedated previous to that time. The certificate had been written before.

Q. 51. Had you any knowledge that it had been so written until the time it was delivered to you?

A. None.

Q. 52. State all the conversation that occurred between you at the time of said transaction.

A. He brought me the certificate and wanted to sell the stock. I examined it, and bought it, and he said I might settle with John for it.

Q. 53. Have you stated all the conversation?

A. All that I recollect of.

(Cross examination by Hon. Charles R. Morrison, for Concord Railroad.)

Q. 54. Did he ask you, when he brought the certificate, what you would give for the stock, and if yea, what was your reply?

A. I don't know whether he did or not, but I think not, though.

Q. 55. How did you get at the price?

A. I don't know how to answer that. I was to give per for it; that is all I can answer.

Q. 56. What is your age, and the present state of your health.

A. I am 70 years of age. It is good.

Q. 57. What was your income in 1869, as near as you can state?

(Objected to as incompetent.)

A. About forty thousand dollars.

Q. 58. Were you chosen a director of the Concord Railroad at the annual meeting in 1870?

A. Yes, sir.

Q. 59. Had you had any connection with any of the arrangements or plans for getting in a new board of directors at that meeting.

A. None.

Q. 60. What knowledge had you, and when and from whom obtained, that your name was to be presented at that meeting as a director?

A. Nothing, only what I saw published in the papers.

Q. 61. Had you been present at any meeting with any individuals for the purpose of bringing about a change of said directors?

A. Not any.

Q. 62. Did you vote for the board that was then chosen? and if yea, what was your object?

A. I did vote for the board then chosen. My object was to turn out the old board and put in a new, because I preferred them.

Q. 63. Had you previously been a director or officer in said corporation? and if so, when and how long, and what officer?

A. I had been a director from the organization of the

board till within four years before the said meeting. I was treasurer of the road at the first of it. I was president for ten or eleven years.

Q. 64. How long had you owned the 200 shares of stock?

A. Five or six years; and more before that. Had not less than 200 shares for five or six years.

Q. 65. Had you, or any others, so far as you know, any intention of securing the election of the new board by the use of any unlawful means?

A. No; none.

Q. 66. Have you, or any other member of the new board, had any intention at any time to use or manage the Concord Railroad in any way contrary to law, or to the prejudice of the stockholders or the public?

A. None.

Q. 67. Has there been any intention on the part of the new board, at any time, to raise the fare or freight upon said road?

A. Not any.

Q. 68. What was the intention and expectation of the new board, as to reduction of fares and freights?

A. I can't tell what the expectation was; they talked about lowering the fares and freights, but whether they expected to do it or not, I can't say.

Q. 69. What was your expectation, as a member of the new board?

A. I expected that if there was any alteration they would be lowered.

Q. 70. Has there been at any time any intention, on the part of the new board, to issue any new stock, or to consolidate the stock of the Concord Road with any other road?

A. Not any.

(Interrogatories direct resumed by Mugridge.)

Q. 71. At the time of said annual meeting, and before you voted on said stock, were you required to make, and did you make, oath before a justice of the peace that you were the absolute and *bona fide* holder of said 300 shares of stock?

A. Yes, sir.

ISAAC SPALDING.

Merrimack ss.—Sworn to before me,

SAMUEL C. EASTMAN,
Commissioner.

Aug. 24, 1870.

Deposition of EDWARD H. SPALDING, in answer to interrogatories by J. Y. Mugridge, Esq.

Q. 1. Are you a stockholder in the Concord Railroad, and were you at the time of the last annual meeting? if so, how many shares of stock did you own at that time, and how many do you now own?

A. No stock stood in my name at the annual meeting, but I was the *bona fide* owner of about 130 shares. I own the same now.

Q. 2. Have you any official connection with any bank at Nashua, N. H.? if so, with which one, and what is the same?

A. Treasurer of the City Savings Bank.

Q. 3. When did you purchase the said 130 shares of Concord Railroad stock?

A. One hundred and twenty I purchased in the month of April or May last. Ten shares I had owned for a number of years—for some time.

Q. 4. Was this all the stock that you owned in said road, at any time, with the exception of said ten shares?

A. It was.

Q. 5. Of whom did you purchase said 120 shares of stock?

A. I bought them of Clark C. Boutwell—I think thirty shares; of Albert McKean, thirty shares; Mrs. Davis, ten; Mr. Pierce, twelve or fifteen shares. I think I had of Mr. Tower ten shares, and my brother bought some of various individuals, some of the Varnums, I think.

Q. 6. How much stock did you vote on, at said annual meeting? and who owned the stock that you so voted on?

A. I voted on 500 shares, owned by the City Savings Bank.

Q. 7. Did you vote on any of the 130 shares that you say that you were the *bona fide* owner of, at the last annual meeting?

A. I did not.

Q. 8. In whose name, upon the books of the corporation, did the 130 shares, of which you say that you were the *bona fide* owner, stand at the last annual meeting?

A. In Dana Sargent's, one hundred; Luther A. Roby's, ten; William R. Spalding's, ten; in Eliza Spalding's, fifteen or twenty.

Q. 9. Who voted on said stock, that you say that you owned on the day of said meeting?

A. The persons in whose names it stood, with the exception of Eliza Spalding's; I can not tell who voted on hers.

Q. 10. State whether or not the vote on all of said stock, owned by you as aforesaid, was cast in favor of the new board, at said meeting?

A. I think it was.

Q. 11. Why did you not have transfers of said stock made to you, on the books of the corporation, if you are the *bona fide* owner of said stock, as you have stated?

A. I considered it was doubtful whether I could vote on my own stock and the stock of the bank—whether I could represent two interests, that was one reason; another, 100 shares in Mr. Sargent's name I had made to him so as to assist me, if I should need, in raising some money.

Q. 12. You say you had made the 100 shares over to Mr. Sargent to aid you, if you should want to raise any money. Did he aid you in obtaining any money?

A. He did not.

Q. 13. Did not Mr. Sargent hold said 100 shares of stock in his name, without any consideration whatever?

A. I pledged the stock to the Appleton Bank, and it remained in the name of Mr. Sargent.

Q. 14. Did Mr. Sargent hold said stock really upon any consideration at the time of said meeting?

A. He did not.

Q. 15. Did he vote upon the same in his own name as the owner thereof?

A. I suppose he did.

Q. 16. Why did said ten shares of stock, which you say that you are the owner of, stand in the name of Luther A. Roby, upon the books of the corporation?

A. I expected to sell it to him at some time, and I wished him to attend the meeting.

Q. 17. Had you sold it to him at the time of said annual meeting?

A. I had not.

Q. 18. Did not said Roby hold said 10 shares of stock in his own name, at said annual meeting, without any consideration whatever?

A. He did.

Q. 19. Did he not vote on said shares, at said annual meeting, as though he was the *bona fide* owner thereof?

A. I suppose he did.

Q. 20. Why did the 10 shares of stock that you say that you were the *bona fide* owner of, stand on the books of the corporation in the name of Wm. R. Spalding, on the day of said annual meeting?

A. Because I had my doubts whether I could vote on it.

Q. 21. Did not said William R. Spalding hold said 10 shares of stock in his own name, without any consideration whatever, on the day of said annual meeting?

A. He did.

Q. 22. Did not said William R. Spalding vote on said ten

shares of stock in his own name, as though he was the *bona fide* owner of the same?

A. I think he did.

Q. 23. Why did the ten or fifteen shares of stock, of which you say you are the *bona fide* owner, stand in the name of Eliza R. Spalding, on the books of the corporation, on the day of the annual meeting?

A. So that she could give a proxy and have it voted on.

Q. 24. Was there any other reason?

A. No.

Q. 25. Did not said Eliza R. Spalding hold the said ten or fifteen shares in her name without a particle of consideration?

A. She did.

Q. 26. Did not she give a proxy to some person to represent said stock, as though she were the honest and *bona fide* owner of the same?

A. She did.

Q. 27. Where did you obtain the money with which to purchase the said 100 shares of Concord Railroad stock?

A. I borrowed \$7,500 of the Appleton Bank.

Q. 28. Was the 100 shares of stock that Dana Sargent voted on, at the last annual meeting, as the *bona fide* and absolute owner, as you have before stated, pledged as collateral security to the Appleton Bank, at Lowell?

A. I think it was.

Q. 29. Was any body's name, except your own, on said note to the Appleton Bank, as indorser or security? if so, whose was it?

A. Yes; William R. Spalding and John A. Spalding.

Q. 30. Was the name of Dana Sargent in any way on said note?

A. It was not.

Q. 31. Where did you raise the balance to pay for said 130 shares of stock, beside the \$7,500 you borrowed at the Appleton Bank?

A. I sold real estate enough to pay the balance, and a good deal more.

Q. 32. Did you sell to your uncle, Isaac Spalding, 300 shares of Concord Railroad stock, at the last annual meeting thereof, after said meeting had opened, and within a short time of taking a vote for Directors? and in the hall where said meeting was being held?

A. I did. The meeting had just opened; was early in the meeting, when Marshall had begun to speak, in the early portion of the meeting.

Q. 33. Where did you get said 300 shares, and were you the owner of the same at the time of the transaction alluded to with your uncle?

A. I was not the owner; John A. Spalding gave the certificate to me.

Q. 34. Was the certificate of the said 300 shares made out to Isaac Spalding, at the time John A. Spalding handed it to you?

A. I think it was.

Q. 35. Do you know who the owner of said 300 shares was, at the time of the transaction with your uncle, Isaac Spalding, before alluded to?

A. I do not.

Q. 36. How long had you had said certificate in your hands before you delivered it to your uncle, Isaac Spalding, in said annual meeting?

A. A short time; probably not five minutes.

Q. 37. Was it handed to you by John A. Spalding, after said annual meeting opened, and was said John A. Spalding present in said annual meeting, at the time you handed it to your uncle, Isaac Spalding?

A. He was not present. It was handed to me, I suppose, before it was opened; I think near the opening.

Q. 38. Do you know of any reason why said John A. Spalding did not deliver the certificate of stock himself to your uncle, instead of delivering it to you, to be delivered to him, as you have stated?

A. I know of none; but I surmise a reason. I do not know of any.

Q. 39. What reason do you surmise?

(Objected to.)

A. He was busy about some proxies—fixing of them at the time. He came in and handed me the stock, and said go and sell it to "Sir Isaac."

Q. 40. Do you know who the owner of said 300 shares was? and do you know how it came into the possession of John A. Spalding?

A. I think Mr. Tower was the owner of the stock; but I do not know. I do not know how it came into the possession of John A. Spalding. Some weeks before Mr. Tower told me he had a large amount of stock, and he wanted to transfer some of it to some one that would not fail—that was good. I told him I thought "Sir Isaac" would be good for it—to stand in his name. From that I inferred that Mr. Tower owned it; but do not know the fact.

Q. 41. For what purpose did Mr. Tower wish to transfer the stock to some one who would not fail? What did you understand his purpose to be, from what he said?

A. He wanted to sell it to some one of the Board who would buy the stock. He thought, eventually, Mr. Spalding might buy the stock.

Q. 42. Did you understand that Mr. Tower wanted to realize the money for the stock he proposed to sell?

A. I did not.

Q. 43. Then you did not understand that Mr. Tower's object in selling and transferring the stock was to realize the money by an actual sale, did you?

A. I understood that he had ample means to carry the stock and hold it; but if he found a good chance to make an investment, he might want to sell, and if he did, he wanted to sell it to the new Board.

Q. 44. Did you understand that Mr. Tower wanted to make a *bona fide* sale of stock at \$50 a share, that had cost him, on an average, \$85 per share?

A. As I have before stated, I did not know that Mr. Tower owned the stock, and I do not know now that he did.

Q. 45. Have you any other knowledge of the ownership of said 300 shares, except what you have stated?

A. I have not.

Q. 46. How long a time did it take you to perfect your transaction with your uncle, "Sir Isaac," as you have called him? and state the entire conversation that occurred between you and your said uncle, in regard to said stock?

A. A few minutes; not more than five. I asked him to buy 300 shares of Concord Railroad stock, and showed him a certificate of 300 shares in his name. He said, "I will take it at par." I replied, "Take it, and pay John;" that was all there was said.

Q. 47. Is that the only connection you have had with said 300 shares of stock?

A. It is.

Q. 48. Do you know what became of said 300 shares of stock, after your uncle surrendered the certificate of the same?

A. I do not.

Q. 49. At the time you delivered him the certificate in the annual meeting, for said shares, did he hand to you any check therefor?

A. He did not.

Q. 50. Have you at any time owned any more shares of Concord Railroad stock, than the 130 shares before inquired of in this deposition?

A. I have.

Q. 51. How many more?

A. 240 shares.

Q. 52. Is that all, and are you positive that is all?

A. I have bought a few shares since and sold them.

Q. 53. Did you buy any stock before you bought said 240 shares, after said annual meeting?

A. I had not.

Q. 54. Are you confident of that?

A. I am.

Q. 55. Were not the 240 shares transferred to you on the fifteenth day of July, 1870?

A. They probably were; but I do not know the fact.

Q. 56. Now did you not buy and have transferred to you, on the 20th day of June, from Sally Demerit, 20 shares of said stock?

A. I bought of Mr. Tower 20 shares of stock, in June; whose it was I do not know.

Q. 57. How much did you pay for said 20 shares, purchased in June?

A. \$75 per share.

Q. 58. Was not that \$10 per share less than said stock cost Tower?

A. I understood that he bought it for that, but I paid him a brokerage.

Q. 59. Where did you get the money to pay for the 240 shares of stock, purchased on the 15th of July, and was not that stock also sold to you by Mr. Tower?

A. It was sold me by Mr. Tower. I gave my note to the Amoskeag Savings Bank and the Merrimack River Savings Bank.

Q. 60. What was the amount of said notes to each of said savings banks, and who signed said notes with you, if any one?

A. One hundred thousand dollars each. Said note to the Merrimack River Savings Bank was signed by Moody Currier, E. Hill, J. H. Pearson, J. W. Johnson, Anson S. Marshall, Wm. R. Spalding, John A. Spalding and Wm. A. Tower, I think, and the note to the Amoskeag Savings Bank was signed by the same parties, with the exception that Frederick Smyth signed said note instead of Moody Currier.

Q. 61. Did the savings bank with which you are connected, at Nashua, make any loans in the spring of 1870 to either of the parties whose names are mentioned in the preceding answer?

A. It did not, but it allowed Wm. R. Spalding to take up some Manchester & Lawrence stock that was pledged as collateral and replace by 50 shares of Concord Railroad stock.

Q. 62. To secure what loan was the Manchester & Lawrence Railroad stock pledged?

A. For money some time before; I think it was over a year, perhaps two years, can not say definitely. Note was for several thousand dollars.

Q. 63. How was said 50 shares transferred to said bank? was it any more than indorsed in blank to them?

A. It was not?

Q. 64. Do you mean to state that there is not now, and has not been, at any time for eight months, a note in said Savings Bank upon which the name of either of the persons mentioned in your answer to Int. 60, appears?

A. We have not the name of any of the above persons, except William R. Spalding, and have not had for the past eight months.

Q. 65. Has William R. Spalding obtained a loan at your Bank within eight months last past?

A. He has not.

Q. 66. Are you connected with the First National Bank, of Nashua, of which John A. Spalding is Cashier? if so, in what capacity?

A. I am a Director.

Q. 67. Is there, in said bank, or has there been for eight months last past, any note on which either of said names appear as signers?

A. There has not, with the exception of William R. Spalding, to my knowledge.

Q. 68. Has he obtained a loan there within eight months? if so, for how much and when?

A. William R. Spalding was one of the starters of the First National Bank. He has been a borrower all along from the start in his business.

Q. 69. Has he obtained any loans on said bank within eight months last past?

A. I think his liabilities have not been increased, but no new loans.

Q. 70. Has Mr. George Clough obtained a loan at either of said banks within eight months?

A. He has not.

Q. 71. Have you testified any where, at any time, that you loaned your brother seven thousand five hundred dollars to buy stock with within seven months, and that you loaned George Clough twenty thousand dollars and took three hundred shares of Concord Railroad stock as security, the loan being at seven per cent?

A. I have not.

Q. 72. Did you testify before the Judiciary Committee, in a matter in relation to an investigation of the savings banks, before the Legislature, June, 1870?

A. I did.

Q. 73. Was this question put to you before the Committee? "Did your brother have money out of your bank to buy stock?" and was you reply thereto, "He did?"

A. I do n't think it was put to me in that shape. I can state what my testimony was, and what the facts are. Nearly two years and a half ago, or nearly three years, we loaned George

Clough two thousand dollars, and we have never loaned him any other money nor had any other transaction with him. He never had any other money of us.

Q. 74. Did you make this reply, in substance, to a question put to you before said Committee? "We loaned him," meaning your brother, "some money on some Manchester & Lawrence Railroad stock. We have his note there now for \$7,500. We have two notes. That money was loaned on Concord Railroad stock seven months ago. We loaned George Clough \$20,000, and took 300 shares of Concord stock as collateral."

A. I did not so state; it is entirely wrong end to. I will state what I did say. The part in relation to loaning my brother \$7,500 on Manchester & Lawrence Railroad stock is true. I allowed him to take up that security and replace it by Concord Railroad stock; and in relation to George Clough we loaned him \$2,000 over two years and a half ago? and have had no other transaction with him; we never had any 300 shares of Concord Railroad stock of him.

Q. 75. At the last annual meeting, did you vote on certain railroad stock, held by said bank, in some way? and if so, on how many shares?

A. I did. 500 shares owned by said bank, and all purchased more than two years ago by said bank, I think.

Q. 76. Did said bank hold any Concord Railroad stock, as collateral, for any party at the time of said annual meeting?

A. None but what is above mentioned, from my brother 100 shares, and George Clough some 35 or 36 shares.

Q. 77. Who represented said stock, if any body, at said meeting?

A. The parties in whose names it stood, as I suppose; I did not represent it.

Q. 78. For what purpose did you buy the stock owned by you, as before stated in this deposition? and did you buy it for the purpose of aiding the movement, then on foot, to change the Board of Directors of said road?

A. I bought it because I thought it was worth one hundred dollars per share, and I think it so now.

Q. 79. Did you not think you were selling it rather cheap, when you sold 300 shares to "Sir Isaac," as you call him, for \$50 per share?

A. I was selling it under instructions, and should have sold it for less, if he would have given no more.

Q. 80. Did your instructions allow you to sell it any less than \$50 per share? if so, for how much less?

A. I had no instructions in regard to price; and I should not quailed in regard to the price.

Q. 81. Why should you not have "quailed" in regard to the price?

A. Because I thought it important for him to buy it.

Q. 82. Why did you think it important for him to buy it?

A. So he could vote on it.

Q. 83. Did you understand he was buying the stock to vote upon it?

A. I did not.

Q. 84. Did you understand you were selling this stock for him to vote upon it?

A. That was one thing I thought of. I thought that if I did not sell it to him, it was doubtful if he could vote upon it.

Q. 85. Did you think it so important that he should vote upon it, that you would not have "quaified" with him in regard to the price?

A. I should not, unless the price had been very low.

Q. 86. How low do you think you would have sold it, to have him vote upon it?

(Objected to as incompetent.)

A. I do n't know how low I should have sold it; but I do n't think, if he had insisted upon my throwing in the back dividends, I should have let the trade slipped.

Q. 87. Suppose you had thrown in the back dividends, how low would that have reduced said stock per share?

A. Forty-seven dollars per share.

Q. 88. Would you not have preferred to have sold it at \$40 per share, rather than that he should not have had it to vote on?

A. I can't say what I might have been led to have sold it for.

Q. 89. Did you obtain any proxies to be used at the last annual meeting?

A. I did.

Q. 90. At whose request, if any body's, did you obtain them?

A. I think I was prompted by my own inclination; do n't think any body requested me to obtain them.

Q. 91. Will you state, positively, that no one did so request you?

A. I do n't think any one did in the first of it; afterward, some one might have said "you can get such an one." I started in on my own inclination.

Q. 92. Who do you think might have so said to you?

A. I think Mr. Greeley said he thought I could get some in Hudson.

Q. 93. Did any of the present Board of Directors request you to see what proxies you could pick up?

A. I think I started to get proxies before I knew who the Board of Directors would be. I wanted a change; I wanted Minot removed.

Q. 94. Did any person, who has since been elected a Direct-

or, ask you to look about and see what proxies you could pick up?

A. I had talked with persons, who proved to be Directors, after I had got the proxies.

Q. 95. Did your brother, Wm. R., request you to look about and see what proxies you could pick up?

A. I do n't think he did, till after I had procured the proxies.

Q. 96. Can you state about how many proxies you succeeded in getting?

A. I think I got between 300 and 400.

Q. 97. For which Board of Directors were said proxies, so far as you knew, and who voted upon said proxies, if you can tell?

A. I procured them for the new Board. Who voted them I do n't know.

Q. 98. State the names of all the persons, so far as you are able, from whom you obtained said proxies, and the residences of each.

A. John Conant, of Jaffrey, one hundred shares; Thaddeus Wheeler, of Hollis, eighteen shares; Mr. Wright, of Hollis, fifteen shares; Mrs. Rockwood, ten or a dozen shares; Mrs. Holden, of Hollis, some ten shares; Mrs. Gowen, of Hudson, fourteen shares; Mrs. Blodgett, of Hudson, some dozen shares; Mrs. Towns and Mrs. Bancroft, twenty-five shares; Mrs. Foster, of Nashua, six shares; I can't call all the names, but they amounted, in the aggregate, to between three and four hundred shares. I know I got all I could.

Q. 99. Did you pay any thing to any one whose proxies you obtained.

A. I did not.

(Cross examination by Hon. C. R. Morrison, for defendant.)

Q. 100. Do you mean to be understood that all the persons named in the last answer made out proxies and signed them?

A. They signed them, but they were made out by me; they did not make them out.

Q. 101. Was the stock that you purchased, prior to the annual meeting, purchased by you exclusively on your own account, on your own motive, and for your own benefit?

A. It was.

Q. 102. Did you sign any paper in relation to not selling out?

A. I did not.

Q. 103. Were you any party to, or did you have any connection with, any association for the purpose of buying stock?

A. I was not, and did not.

Q. 104. Did you buy your stock for the purpose of turning out the old Board, or simply as an investment?

A. I bought it for an investment principally, and I wished to see Minot removed.

Q. 105. Did you understand that the sale of the 300 shares to Isaac Spalding was an actual, *bona fide* sale?

A. I did.

Q. 106. Was not the Conant stock, before mentioned, in fact cast for the old Board, as you understand?

A. It was.

Q. 107. Were you any party to, or did you have any connection with, borrowing any money, from any savings banks, to be used in the purchase of Concord Railroad stock, which was afterward voted upon at the annual meeting?

A. I was not, and did not have any thing to do with any such project.

Q. 108. Had you any knowledge of any purpose on the part of the new Board, if elected, to operate the road contrary to law, or in any way prejudicial to the stockholders or to the public? and was there any such purpose on the part of any who helped elect them, so far as you know or believe? or on the part of said new Board?

A. No.

Q. 109. So far as you know or believe, was there any purpose, on the part of any of said persons, to raise the fares or freight, or to consolidate the stock with that of other corporations, or issue new stock?

A. There was not to my knowledge or belief.

(*Direct examination resumed, by E. A. Hibbard, for the plaintiff.*)

Q. 110. You say you purchased your stock simply as an investment. What sum did you pay for it that you did not borrow of the Appleton Bank, or the Amoskeag Savings Bank, or the Merrimack River Savings Bank?

A. I paid for some forty-four shares that I did not borrow the money for.

Q. 111. Have you paid any part of your share (twenty thousand dollars) borrowed of those two Manchester savings banks?

A. No; I have not.

Q. 112. Did you or not understand, at the time 300 shares were transferred to Isaac Spalding, as you have stated, that they were to be, or would probably be re-transferred by him after the annual meeting?

A. Nothing was said about it. I really had no understanding—that was the fact of it.

Q. 113. Was it not your understanding, and that of John A. Spalding, as communicated to you by him, that these shares could not be voted on by any one unless a sale should then be made?

A. I had no communication or understanding with John A. Spalding, except to sell.

Q. 114. What service did you render George Clough in procuring money with which to purchase Concord Railroad stock?

A. None, except I said to the Cashier of the First National Bank, in Boston, that George Clough was good; I think he borrowed some there—I do n't know how much.

E. H. SPALDING.

Aug. 24, 1870.

Sworn to by consent before

H. P. ROLFE.

C. R. MORRISON, *for def't.*

H. A. HIBBARD, *for pl'ff.*

I, FREDERICK SMYTH, of Manchester, N. H., being duly sworn, depose and say, in answer to interrogatories, as follows: (*Interrogatories by E. A. Hibbard, Esq., of counsel for the Northern Railroad.*)

Q. 1. When, if at all, did you first contemplate the purchase of stock in the Concord Railroad, with any view to getting control of that corporation?

A. I can not state the time when I had that in view.

Q. 2. When, as nearly as you can state, did you take any part in proceedings which contemplated a change in the Board of Directors of the Concord Railroad?

A. I could not state.

Q. 3. Were you at any time one of a number of gentlemen who were associated together for the purpose of electing a new Board of Directors in that corporation?

A. I never belonged to any association as such. I purchased stock and voted for a new Board of Directors; that was one of the objects, but not the sole object, of my purchasing stock.

Q. 4. Do you testify that you were not one of a number of gentlemen who were associated together for the purpose of electing a new Board of Directors?

A. I do not so testify. I do not clearly understand the meaning of the word "associated" in this connection.

Q. 5. When, as nearly as you can state, were you first engaged in any project which had in view a change in the Board of Directors?

A. I think about a year ago—it may be longer—some gentlemen asked me if I would purchase Concord Railroad stock. Among other reasons given at that time for so doing, was a change of Board of Directors; I declined positively. I think three or four months afterward some of the same parties repeated the suggestion; I again declined. I think in about January or February, of the present year—I may be mistaken as to the time—some of the same parties, I believe, renewed the request. I then consented to purchase about two hundred shares, if I could do it at a reasonable price. Soon after that, I do not remember when, I did purchase two hundred or three hundred; I do not remember which. I have no dates, and did not get it transferred at that time. I did not then intend to purchase any more; but I did afterward purchase, from time to time, until I believe I had at one time about twelve hundred shares.

Q. 6. Who were the gentlemen who asked you to purchase stock at those three different times?

A. I think the first time it was Edward H. Spalding, of Nashua, alone. The second time, I think Edward H. Spalding and William R. Spalding, of Lawrence, were together. The

third time, as nearly as I can recollect, Mr. John H. Pearson was present, Edson Hill—and one of the Spaldings, I can't recollect which, I think was present. I also think Mr. James W. Johnson was present. There may have been others; but I can not recollect that there were.

Q. 7. What did Edward H. Spalding say in the first interview?

A. I can not repeat nor remember all he said. The most important point that strikes my mind now, is, he thought the Concord Railroad stock was worth more than it was selling for; that it would always be good, and at any price under eighty-three, would net above six per cent; that the Spaldings owned and controlled a large amount of stock; that the road could be managed to pay ten per cent, which the law allowed, and admit of a very large reduction of fares and freights; that it would be very easy to change the Board of Directors and accomplish this. He said he should like to have me purchase some stock and be one of the directors of the road, and that that would be a good thing for me and the public. I answered him that I had no ambition in that direction; that I should like to do a good public thing, but that I had business enough of my own to attend to. I think that embraces the substance of the conversation.

Q. 8. Did he make any charge of mismanagement of the road by the then existing officers?

A. He did make some, but they did not impress my mind enough to recollect them. I do not know but that "charges" would be too severe. He found fault; I had no fault to find with the management, and no objections to them personally. I do n't know as I told him so, but perhaps I did.

Q. 9. What did the two Spaldings say in the second interview to which you have referred?

A. I think it was in substance about like the first, as nearly as I can recollect. Either at the first or second interview they said they thought a majority of the then stockholders would vote for a change. I can not recall any other item different from the previous conversation.

Q. 10. At the time it was intimated by the Spaldings, or one of them, that a majority of the old stockholders would go for the change, did they or not propose that you should join in a movement to purchase stock?

A. They asked me if I would purchase some.

Q. 11. Purchase some for what purpose?

A. I do n't understand that they gave any purpose, except as I have stated.

Q. 12. What did Mr. Pearson and the other gentlemen say at the third interview you have mentioned?

A. I do n't remember distinctly what Mr. Pearson said, or

any other gentleman present. We all talked some, I think, in regard to the Concord Railroad, its management, prospects, value of the stock, present and prospective, the desirableness of the stock as an investment, of some of the ways in which its management might be improved. I do not now think of any other subject discussed then.

Q. 13. Where was the interview and what was the date of it, according to your best recollection.

A. It was in the Directors' room of the First National Bank in Manchester. I think it was some time in February last; I can not tell whether it was early or late in February.

Q. 14. Was any person present except those you have named?

A. I can not now say whether there was or not; I have an impression that Moody Currier was present.

Q. 15. How happened those gentlemen to meet there at that time? Did you or not know beforehand that they were coming?

A. I have no recollection how it occurred. I have no recollection that I knew of it beforehand.

Q. 16. To what conclusion did you come at that interview in regard to making an effort to change the Board of Directors?

A. I do n't think we came to any conclusion. I agreed to buy some stock. I remember stating to them that I did not believe the thing could be conveniently done then, but perhaps it could at some future time—I mean a change of the board. I think some of those present stated that they would purchase stock, if it could be got at a reasonable price. I do not remember who so stated nor how much they proposed to purchase. I do not remember what we considered a reasonable price; we talked it over. I think we concluded that at eighty-three it would pay, as money then was. I think at that time it was selling less—about seventy-five I think, and I think I did not then mean to pay over seventy-five.

Q. 17. Why did you not "believe the thing could be conveniently done then?"

A. I had thought but very little on the subject at that time, and had but very little knowledge of the situation of the stock, or of who the stockholders were, or how they would be likely to vote, and supposed the parties in power would like to stay, and they had the means, to a large extent, to control the stock.

Q. 18. Was it or not talked about at that interview who should constitute the new Board of Directors, if a change should be made, or who should hold any other office of the Corporation?

A. I do n't recollect that that subject was named at that meeting.

Q. 19. Were any charges made at that meeting against the existing management of the Road? if so, what?

A. I do n't think any charges were made. I think some of them found fault with the management. It was talked several times, I think, more prominently than any thing else, that the freight and fares were too high; that the Road ought to afford better accommodations, considering its favorable circumstances, and at a reduced rate. I think there were some other complaints. I do not remember what they were.

Q. 20. Was it or not stated in that meeting, or estimated, what number of shares it would be necessary to purchase to effect a change in the Board of Directors?

A. I do n't recollect that it was.

Q. 21. What had you next to do with the movement?

A. I do n't remember what I did do next. I bought some more stock after that. I had some talk after that—talked a good deal—I do n't remember what.

Q. 22. Name the persons who were actively engaged in the movement for changing the Board of Directors, from that time until the annual meeting, so far as you know?

A. I know stock was bought by Mr. James W. Johnson, for others—I do not know that he bought any for himself; Moody Currier; J. H. Pearson; John Kimball; Anson S. Marshall; Natt Head; Edson Hill; John A. Spalding; Joseph B. Clark; George W. Riddle; I was informed that James R. Hill bought some; William A. Tower, of Boston; William R. Spalding, of Lawrence, said that he bought some; I heard Edward H. Spalding say that he bought some; Dr. Thomas Wheat bought some; Charles H. Bartlett; Charles Williams; Reed P. Silver, I was told, bought some. There were others, but they do not now occur to me. I have personal knowledge as to very few of these, but I have no doubt as to their buying. I heard that Isaac Spalding bought more stock, also Mr. Tallant, of Concord, and Otis Barton, of Manchester.

Q. 23. State whether or not you have, or have had, any interest in any stock that was purchased by either of the persons named, or any other person?

A. I have no recollection that I have, or ever had, any interest in any stock that did not stand in my own name.

Q. 24. Do you know of any stock being voted on at the last annual meeting, that was not owned *bona fide* and absolutely by the person in whose name it stood on the books?

A. I do not.

Q. 25. State the first interview which you can recollect of having with your associates, or any of them, after the inter-

view which you have described as the third, and state where it was, and who were present and what occurred?

A. After that time, we met, sometimes two or three of us that were there, sometimes in the street and sometimes elsewhere. I have no recollection of the next meeting of the same persons who were present at said interview. There were meetings of the same individuals and others; but I can not tell the times. Generally, our meetings were accidental.

Q. 26. When, if at all, was George Clough present at any of those meetings?

A. I remember Geo. Clough was at the First National Bank once after that—possibly twice—once in Boston, when some of us were together; I can not state the time—once he was present, when we were considering the proposition of Gov. Stearns—I think it was in March; I think the meeting in Boston was before the proposition of Gov. Stearns was made. I now remember that it was. I think Mr. Clough was present twice at Boston.

Q. 27. State what occurred at the different meetings, prior to the time when you say the proposition of Gov. Stearns was considered, where the meetings were held and who were present, as nearly as you can remember? State them in their order, as nearly as you are able?

A. I can not state them in their order, nor give the number. I can state some things that occurred at some of them. I can not now remember any meetings we had prior to the proposition from Gov. Stearns, though I think we had some. There were one or more meetings additional to the third one mentioned, at which I decided to buy some more stock, and before the proposition, as I now remember. I can not state where they were, nor who were present. There was no business transacted, but some talk about matters and things in general. I can not remember exactly what it was.

Q. 28. What induced you, at these last named meetings, to decide to buy more stock?

A. I was told on the street, and in other places, that parties were buying stock to vote against ours. It would be necessary for us to buy more, if we expected to succeed in making any change the present year.

Q. 29. Did or not others of your associates, and if so, who, also decide to buy more stock when you did?

A. I think some of them did on or about that time. I think a large portion of those men I have named, bought their stock from time to time, and were buying all along. Some of those persons I have named as owning stock bought it about this time. I will state further, that this whole matter grew gradually upon me. When I bought stock, I heard of others buying against me, and not wanting to be beaten, I bought

again, from time to time, feeling all the while it was a safe operation, in any contingency that might occur.

Q. 30. What occurred at the meeting or meetings in Boston, before you say Gov. Stearns' proposition was received?

A. I do n't recollect any occurrence at those meetings, except to talk over matters, the same as we had done before and afterward. We kept no records of what was said or done. There were no formal meetings. I can't tell who were present. I can state who were generally present. Some times I would see Edson Hill, Mr. Johnson, Mr. Pearson and Anson S. Marshall, and sometimes the Spaldings, Edward, Wm. R. and John A. But I do n't recollect of ever meeting them all at any one time, except when the proposition of Gov. Stearns was submitted.

Q. 31. When, according to your best recollection, was it arranged who should constitute the new Board of Directors.

A. It was not agreed upon till a few weeks before the annual meeting, and some time after Gov. Stearns' proposition to buy us out. We had talked over who some should be, but had not decided whom we would support. There was considerable discussion, from time to time, with regard to whom we would support for officers. I was asked if I wanted to be President; I said, no. Mr. Johnson was named for director. He said he did not know whether he should want to be or not—could not be unless he resigned as Railroad Commissioner, and did not know as he should want to do that. So there was no formal decision, who all the officers should be till very near the annual meeting. I will say that soon after the proposition of Gov. Stearns was rejected, we agreed upon whom we would support for part of the directors, and I think for clerk. I am not sure as to the treasurer; we agreed to support Isaac Spalding for President.

Q. 32. Was there, or not, any understanding between you and your associates, prior to the annual meeting, that Isaac Spalding would desire to give up the office of President and Director at an early day? if so, was it or not, understood who should take his place?

A. It was named to me frequently, that Isaac Spalding would probably resign the presidency, and perhaps the directorship, though I am not sure as to this, at some time not far distant, and in that contingency they would support me if I wanted it; but I never consented to accept it. I never saw the hour I would accept it. I would not accept it to-day if offered to me, if we had the road all free and clear; and I do not think I ever will accept it under any circumstances. In case of a vacancy in his office, as director, John A. Spalding was suggested as a successor.

Q. 33. Where was the meeting at which the propositions of Gov. Stearns were considered, and who were present?

A. There were three meetings, at which those propositions were considered. The first was in Boston, at the City Hotel. At that meeting there were present—Mr. Pearson, Mr. Marshall, Mr. Johnson, Wm. R. Spalding, Edson Hill, John A. Spalding, George Clough and Edward H. Spalding. The next meeting was at the First National Bank, at Manchester. There were present the same persons, and Mr. Currier. It was not a great while after the first meeting. The third meeting was also at Manchester, and I believe the same persons were present.

Q. 34. State all that occurred at the meeting in Boston, last named?

A. Mr. Johnson stated that a responsible party would pay to those present one hundred thousand dollars, and take their stock at what it cost them, if they would accept of that proposition. There were some conditions to the proposition, which I do not clearly recollect. There was a good deal of surprise expressed by some present, and wonder who the party could be, and what the object could be. It was finally stated, in confidence, at that time, not to be named by any one present, that it was Gov. Stearns. I asked Mr. Johnson if Gov. Stearns wanted the stock to control the road for the purpose of favoring consolidation, then talked of. He said no; but that he wanted to control the stock of the Concord Road for the purpose of getting a vote, at the annual meeting—to authorize some contract to be made between the Concord and the Northern roads—I do not definitely recollect any other talk. There was a great deal of discussion, and different views expressed. Some said they would accept if they could be satisfied that it would not favor the consolidation scheme; that the contract proposed to be made with the Northern Road should lead to a reduction of fare and freight, and that the property of the Concord Road should not be injured thereby, and I was one of that number. Others said they would not sell to Gov. Stearns or any body else, on any terms or conditions whatever; that they would lose every dollar they had paid for the stock, before they would sell, &c. We did not agree to accept it; but did agree to send back a committee to Gov. Stearns, to get his terms definitely, in writing; a majority concurred with me. We agreed to have another meeting. There was another thing in Gov. Stearns' proposition, that I forgot to state, and that was that the suit against George Clough should be entered "neither party," at the next term of the court.

Q. 35. What part did George Clough take at that meeting?

A. He did not take any part—would not express an opinion.

Q. 36. Did you understand at whose request Gov. Stearns brought the disposition to be made of the Clough suit into his proposition.

A. Mr. Johnson told me that Mr. Tappan requested it, as Mr. Clough's counsel.

Q. 37. State what occurred at the next meeting.

A. The committee, consisting, I think, of Mr. Johnson and Wm. R. Spalding, reported that they had had an interview with Gov. Stearns; that he repeated the proposition he had made before in substance, but that he did not wish to put it in writing. Mr. Johnson, for the committee, reported that he took down the minutes of the proposition in writing, in his own hand, as Gov. Stearns gave it off. He also presented a paper, which he said was in the hand-writing of Col. Tappan, agreeing that the suit or suits against Geo. Clough should be settled by entering it in Court "neither party." The minutes of the committee did not differ from the proposition which Mr. Johnson had before brought from Gov. Stearns, materially, except that he did not want to pay the bonus money until after the stockholders, at the annual meeting, in May, had voted for his contract. They unanimously decided not to accept the proposition, and respectfully returned that answer to Gov. Stearns.

Q. 38. State what occurred at the next meeting.

A. At the next meeting Mr. Johnson reported that he returned our answer to Gov. Stearns; that the Governor said he would pay the cash down for the bonus of one hundred thousand dollars, and that he had got the money with him for part of it; that he did not want to put it in writing, but would do so at the proper time; that he thought we could trust him to do that; that if he paid the money and trusted us, we ought to trust him. Before the report, and the first thing that Mr. Johnson said to me that evening, was, Gov. Stearns has given me fifty thousand dollars, or has given me authority to draw on him for fifty thousand dollars to-night, I do n't remember which, and he wished me to ask you how much money you will loan him from your Savings Bank toward paying for the stock and paying the bonus, if this proposition should be accepted, as it would take a larger amount of money than he could command at that time to fulfill this engagement.

There was a great deal of discussion. We had a long meeting. Mr. Pearson said he would not sell any way. George Clough said he would n't. I was completely surprised at George Clough's position, and told him so. I said to him, I could not conceive of any reason why he should not accept

the proposition; that I believed he would be twenty-five thousand dollars better off to accept the proposition than he would if we went on and if his friends got the management of the road. I could not see any possible way how they could do by him as Gov. Stearns had offered, or benefit him in any pecuniary way, for you have repeatedly said to me, George, that if your friends got the control of the Concord Railroad, you would not ask or receive any office in connection with it; and that if you would accept, I can't see how the Directors could consistently and prudently, under the peculiar circumstances of the case, show you any favor in that direction. He answered me that it was not money that he wanted, but his honor and integrity sustained; that he did not like the name of selling out. The other discussions were general, and I can not remember them as distinctly as I can this.

We decided not to accept the proposition, and thereupon some one suggested that we agree not to entertain any more propositions from any body; that we hold on to the stock we had, and that we buy more if it was necessary. That was discussed. Then finally it was agreed, though not quite unanimously, that we would not sell out unless six or seven of the nine present agreed to it. When we had got about through, some one said "Let's put that down," and Mr. Marshall wrote it out. Then some one said "Put down, now you are about it, the names of those agreed upon for officers, and let us see how near we are agreed upon that." Then some one said "We ought to do some thing for Clough." Some said "they could not see what they could do." Others said "We ought to give some expression about it." I do not think Clough said any thing about it. Finally, it was decided to put down some thing like this, substantially: That in case they succeeded and were elected officers, they would favor an early, just and honorable settlement of the Clough suits. Then some said "Let us sign it." Some said "What is the use; it is a mere memorandum, and we understand it." Finally, we agreed to sign it, and did so. The names of the officers we agreed to support were those elected, except that Mr. Tower's name was not in the list. I think it embraced the treasurer and clerk who were elected. I am not sure that all signed it. I would not state that either of the Spaldings signed. I think one, or both, went home before it was reached. I am not sure whether Mr. Currier signed it then or not. If he did, I do not think he read it. I think John H. Pearson, Anson S. Marshall, J. W. Johnson, Edson Hill and myself, signed it at that time. I do not now remember whether George Clough signed it or not. I have no knowledge whatever of what became of the paper.

Q. 39. What amount of money did you have, of which you desired to make an investment at the time you decided to purchase Concord stock?

A. I can not tell what amount. I had some, and expected to receive some from different sources, some of which I have received already. I had, and expected to receive, during the year, about fifty thousand dollars.

Q. 40. State your purchases of stock in their order, as nearly as you can, giving the number of shares at each purchase, the prices paid, and the dates?

A. I can not state the order of the purchases and the dates; I can not state exactly the price. I think the first purchase was either two or three hundred shares. Some of it I purchased individually, but the majority of it Mr. Johnson bought for me. I purchased in all, to the day of the meeting, I think, about twelve hundred shares. I bought some of individuals at \$83, with the dividend on, equal to about \$2 per share. I paid Mr. Johnson \$85. It cost me, on the average, about \$83, or a little more. On the amount procured from Mr. Johnson, the price was to be averaged by him, and on his averaging the price there was a drawback paid to me, which left it about \$84. Mr. Johnson made purchases at various prices for several of us, and averaged the price on the whole, so that each one paid the same for the stock.

Q. 41. State the aggregate amount of money which you paid for Concord stock, prior to the last annual meeting, as nearly as you are able, and from what sources you obtained it?

A. I had of the Amoskeag Savings Bank forty-two thousand five hundred dollars; I had of J. W. Johnson, money that he hired at the Merrimack River Savings Bank, on collaterals which I furnished him, twenty thousand dollars; I had of J. W. Johnson, money which he hired of the First National Bank of Manchester, twenty-two thousand five hundred dollars; I hired of Gen. Natt Head, ten thousand dollars. I do n't remember now that I hired any more money. The aggregate amount of money that I paid for Concord Railroad stock, prior to the last annual meeting, was about one hundred thousand dollars. I can not now remember from whence I obtained the excess of money paid over what I borrowed. I do not keep any cash account of my private affairs, and have not for several years. I also remember that I hired twenty-five thousand five hundred dollars of the National Savings Bank, in Concord, through J. W. Johnson, for which I pledged three hundred shares Concord Railroad stock. On the note were the names of J. H. Pearson, J. W. Johnson, A. S. Marshall, and my own. Soon after, before the annual meeting, I sold two hundred and twenty-five shares of this stock, seventy-five each to A. S. Marshall, J. H. Pearson and Mrs. Johnson, wife of J. W. Johnson.

Q. 42. State the circumstances of your borrowing forty-two thousand five hundred dollars of the Amoskeag Savings Bank, and the date?

A. I can not now state the date accurately, without the note; I think, however, it was March 10th. When I had determined to buy Concord Railroad stock, I did not intend to hire money. I did not expect to purchase more than I had funds to pay for, or expected to have about that time. As I continued my purchases, I expected and intended to have my money of a man in New-York, of whom I had had large sums for the State, while Governor, who had said to me that when I wished a loan for myself or friends on satisfactory securities, he thought he could accommodate me on better terms than I might be able to get in New-England, as he was largely in the way of investing trust funds for others. About the time I intended to apply to this man, Moody Currier said to me, I should like to hire some money at your bank, and I will loan you from our bank, on good security, if you desire. I told him I would lay the matter before the investing committee, and thought, as we had the money, it might be a good arrangement. I did so. They authorized me to make the loan to him, and I hired of Amoskeag Savings Bank the same amount, namely, forty-two thousand five hundred dollars.

Q. 43. Did Mr. Currier assign to you any reason why he did not borrow of his own savings bank?

A. He did. He said by the by-laws of their bank he could not be indebted to it.

Q. 44. State the names of the investing committee in the Merrimack River Savings Bank? also in the First National Bank?

A. The Investing Committee of the Merrimack River Savings Bank, are Waterman Smith, Stephen Palmer, Charles H. Bartlett, Charles Williams, and myself. Of the First National Bank, the Committee to make loans, investments, &c., are the President and Cashier; their action to be submitted to the Board of Directors at their meetings. The President is Waterman Smith, and I am the Cashier.

Q. 45. Who are the Directors of the First National Bank, and who are the Trustees of the Merrimack River Savings Bank?

A. The Directors of the First National Bank are Waterman Smith, W. W. Brown, Thomas Wheat, David Cross, Natt Head, Joseph B. Clark, and Frederick Smyth. The Trustees of the Savings Bank are eighteen in number. Five constitute a quorum. Those whom I can now remember are Stephen Palmer, M. V. B. Edgerly, David Cross, Charles H. Bartlett, Wm. G. Perry, Waterman Smith, Joseph B. Clark, Charles Williams, John Brugger, John L. Kelley, Natt Head, A. C. Heath.

Q. 46. State the circumstances of your having twenty thousand dollars of J. W. Johnson, which he received from your Savings Bank?

A. I think he and Mr. Henry P. Rolfe were at the bank one evening, talking over these railroad matters, and I said to Mr. Johnson that if we had got to buy as much stock as we had talked of, I had got to hire considerable money. I told him that we had some money in our Savings Bank which we desired to loan, on good security, and that our committee were willing to loan it to purchase Concord Railroad stock, if they could have notes and good security. I think it was at that time that Johnson said that he thought he could get some from the National Savings Bank, at Concord. I told him that if he would hire the money from the Merrimack River Savings Bank—say twenty thousand dollars—I would furnish him good collaterals, and would see that he suffered no loss in any contingency. He said he was willing to do it, and did it. I think I asked Mr. Rolfe, at the same time, how we should fix the matter, so that in case Johnson should have any thing to pay, more than the securities pledged, he would be safe. I think it was Mr. Rolfe who advised the giving a bond. I then asked him to draw a proper bond. He did so, and I paid him for doing it. I gave the bond to Johnson. I wish to say, in this connection, that I was not aware that such an instrument was not perfectly proper and legal, until I testified before the Judiciary Committee of the Legislature, when it was suggested that the legality of that might be questioned, from some law or statute that formerly applied to State Banks, but in the General Statutes had been made to apply, possibly, to Savings Banks. I had known of this law as applying to old State Banks, but had no idea that it could be in any way construed as applying to Savings Banks. J. W. Johnson signed the note. The securities consisted of Concord Railroad stock, and some Government Bonds; some Concord & Portsmouth Railroad stock; some Manchester & Lawrence Railroad stock, and some Northern Pacific Railroad stock, were either pledged with this loan or with a similar note on the First National Bank.

Q. 47. State the circumstance of your having twenty-two thousand five hundred dollars of said Johnson, which he received of the First National Bank of Manchester.

A. The circumstances are similar to those just related in regard to the money from the Savings Bank; J. W. Johnson signed the note alone. These notes have since been paid by Mr. Johnson, with about seven per cent interest.

Q. 48. Why did you not borrow said twenty thousand dollars and twenty-two thousand five hundred dollars from those two banks in your own name.

(Objected to by Mr. Marshall, of counsel for defendant.)

A. I do not know of any particular reason, except that I never had borrowed a dollar of the Bank, myself, and I think I thought there possibly might be some legal objection, though I

did not know of any, and could not conceive of any objections to Mr. Johnson's note, secured in this way, as he was known to be responsible for whatever he signed.

Q. 49. If you thought their might be some legal objections to your having the money in your own name, how did you think the objection would be obviated by the money being taken out in Johnson's name for your use?

(Objected to, upon the ground that Mr. Johnson made the loan and all the circumstances connected therewith.)

A. Because, if I had hired it in my own name, I should have been indebted to the Bank; as it was, I was not, directly or indirectly, as I understood it.

Q. 50. What officers of your two banks understood, at the time said money was procured by you through Johnson, that the money was for your use?

A. I think all the Investing Committee so understood it—of both banks.

Q. 51. Did they or not understand that you procured the money with which to purchase Concord Railroad stock?

A. I think they did.

Q. 52. Was it or not your purpose, in procuring said money in the name of Johnson, to avoid the entry of your own name, as a debtor to said banks, on their books?

(Objected to as answered before, substantially, and otherwise incompetent.)

A. I used no deceptions, and intended to use none whatever, in relation to the transaction. I can't say it was my intention to avoid the entry of my name, as debtor to the banks, by getting Mr. Johnson to borrow the money for me. I did not think of that at the time. The stock pledged, standing in my name, showed that it was borrowed for me. I supposed that any one, seeing the note, would understand that, as the stock was transferred by me in blank, which would show that the stock was originally mine, and put under the control of the bank by Mr. Johnson.

Q. 53. Was it, or not, your understanding, that by a transfer of your stock in blank, it would give the bank a perfect title to it, in case of an attachment of it, as your stock, before any transfer was entered on the treasurer's books of the various corporations?

(Objected to as asking the legal opinions of the witness, as he can have no understanding of it unless he has knowledge of the law, and as otherwise incompetent.)

A. I understood that stock transferred in blank was in complete control of the bank, to be transferred to the bank at any moment when the bank should so desire; that it was just as safe in that form, to the bank, in every respect, except in case of attachment before its transfer, and in this case I knew

it could not be attached, for I was owing no debts that were not abundantly secured. I would say farther, that this loan was only of a very temporary character. I expected it would be paid in a very short time, probably in a very few days, and it has since been paid.

Q. 54. You have stated that Mr. Johnson paid those notes; why did he pay them if you had the money?

(Objected to as entirely immaterial.)

A. I furnished him the means to pay them. I furnished him the stocks that were pledged to raise money to pay the notes with. I suggested to Mr. Johnson that I had not time to go to New-York, where I was intending to get the money to pay the notes, and I thought he had better take the securities and pay the notes with them. I took the notes and securities to Boston, and Mr. Johnson sold the securities and paid the notes and took them, the banks receiving seven per cent, or about that rate of interest, from the time the money was borrowed. I think it was about two weeks ago. It may have been shorter; I do not remember the day.

Q. 55. Was this done before or after the adjourned session of the Supreme Judicial Court, at Manchester, August 11th?

A. I do not remember.

Q. 56. State the circumstances of your borrowing ten thousand dollars of Natt Head, and where he obtained the money, if you know?

A. Gen. Head said to me, one day, that he had about twenty thousand dollars on hand. He either said that he was a good mind, or thought that he would purchase Concord Railroad stock with it, and asked me what I thought he had better do with the money. I said, "General, I wont advise you. I think the stock is perfectly good, and a safe investment—as good as any thing you can invest it in that is free from taxation in every form. If you do n't determine to purchase Concord Railroad stock, and have no other use for it, I will hire it of you, giving you my note and Concord Railroad stock, at eighty-five, as collateral security, and pay you six per cent." He asked me how long I wanted it. I told him perhaps three months, and perhaps a year, or longer; that I was expecting, as soon as I could get time, to get all my money together of Mr. Frothingham, of New-York. If I did so, I should want to pay him the note as soon as I got it. He asked me if I wanted it that day. I told him no. He said he would let me know in a few days. If he did not purchase railroad stock with it, or find a better use for it, he would let me have it, or a part of it. Soon after this, he informed me that he had decided to purchase one hundred shares of Concord Railroad stock. He either said he had ordered it of Mr. Johnson, or asked me to order it of him, I do not remember which, and

that he would let me have eight or ten thousand dollars, if I wanted it, on the terms named. I gave him my note for the sum borrowed, I do not remember the exact sum; it was about ten thousand dollars, and Concord Railroad stock, at eighty-five, sufficient to cover the loan, and I still owe him the money. I think he gave me a check for it, or a part of it, on the City Bank of Manchester.

Q. 57. Of whom did you purchase the three hundred shares transferred to the National Savings Bank at Concord, and at what price?

A. I can't state positively, but think I purchased it of Mr. Johnson, on the same terms I purchased all the other stock. I have explained all that.

Q. 58. For what reason did you sell one fourth part of said stock to said Pearson, Marshall and Mr. Johnson?

(Objected to.)

A. I can't state distinctly; but it is my impression that I made a suggestion to Mr. Pearson, and the other gentlemen on the note, that inasmuch as they were jointly held to pay the note, that they had better own their share of the stock pledged. One fourth part of the loan, as between ourselves, was assumed by Mr. Pearson, and one fourth by Mr. Marshall, and one fourth by Mr. Johnson, the stock sold to them remaining pledged as security as before.

Q. 59. Who originally proposed to borrow said twenty-five thousand five hundred dollars of the National Savings Bank?

A. I think I have stated that Mr. Johnson proposed to borrow it for me.

Q. 60. Did he or not inform you that he was one of the Trustees of that Bank?

(Objected to.)

A. He did not.

Q. 61. State any other loans made by your Savings Bank of money to be used in purchasing Concord Railroad stock, during last winter or spring, and what security was given?

A. I don't think of any other loans, unless you might call it a loan. I took a sight check, signed by Mr. J. W. Johnson and Mr. Edson Hill—one for twenty thousand dollars. It was paid within six days. Drafts of that kind are usually put into the drawer and reckoned as cash till remitted or collected. I do not remember the amount of the other one. Both were paid within six days. They were both in the usual form of checks not entered. They filed Concord Railroad stock as collateral at about \$70. The other check I now remember was for thirty thousand dollars. These I entered on the books of the bank as discounted, because I did not want any transaction covered up.

Q. 62. State any other loans made by your National

Bank, to be used in purchasing Concord stock during the last winter or spring, and what security was given?

A. I think there was a loan of eight thousand five hundred dollars made to Mr. Charles Williams. There was one to Charles H. Bartlett of eight thousand five hundred dollars. That is all I remember. We had their names and Concord Railroad stock for security. I can not state the amount of stock.

Q. 63. State whether or not the investing committee of your two banks gave you any general directions as to the loan of money to be used in purchasing Concord Railroad stock? if so, what?

A. I will state that the loans of the Savings Bank are generally made by myself and the President, under general instructions of the investing committee. About the time I thought of purchasing Concord Railroad stock, I had talks with individual members of the committee about the matter; I called a meeting of the investing committee; at that meeting we talked over the present and prospective value of the Concord Railroad stock. After talking the matter over, I did not recommend any purchase of the stock, though some members suggested it would be safe, at \$83, to purchase. It was suggested it would be perfectly safe to take it as collateral at about \$75. Other stocks were discussed at the same time, all with a view of getting at the minds of the committee as to the best investment of our funds. I think I recommended, at that time, the buying of Chicago bonds, of which we had some at that time. On referring to my books, it occurred to me that we could not loan, by the law passed the year before, only half our funds out of the State, and that we could not therefore purchase any more bonds, or take any more securities out of the State, till we had made a loan in. It was then voted that the President and Treasurer be authorized to loan the money, then on hand or that might be on hand before the next meeting, as they thought best. We made some other loans, and the President said to me, one day, "You have my authority for loaning \$150,000, on good names, and Concord Railroad stock as collateral, and such margin as you think safe. I told him I did not think we should want half of that. When I made any loan in that direction, I showed him the notes, on or about the time, and they were approved by him; reported to the investing committee, at the next meeting after the loans were made, and by them approved.

Q. 64. You say, near the close of your last answer, "I told him I did not think we should want half of that." To whom does "we" refer?

A. I intended to say "should want to loan half of that"; and the we refers to the bank.

Q. 65. Why not want to loan more.
(Objected to.)

A. I think, at that time, I did not desire to make any more loans than necessary in our State, because the loans out of the State are more profitable; we get seven to eight per cent for loans out of the State, while we can't legally get but six in the State.

Q. 66. State whether or not all the stocks which were transferred to either of your banks as security for the money used in the purchase of Concord stock, were transferred in blank?

A. I think they were generally, and that is the usual practice of the bank on short loans where parties were known to be good.

Q. 67. State whether or not there was any agreement or understanding that the stock held by Mr. Tower, on the day of the annual meeting, should be taken wholly or in part by yourself or your associates?

A. I have no recollections of such an agreement.

Q. 68. Has or not said Tower, since the annual meeting, transferred a large part of his stock to yourself or your associates? Has or not Isaac Spalding transferred a large portion of his to yourself or your associates? If so, state your knowledge of the transaction, and why it was done?

A. I do n't know how much stock Mr. Tower has now; or has had at any time since the annual meeting, nor how much he has purchased since. I told him, at one time, I do n't remember when, that I would take my share with the directors and some others, of what stock he might purchase that came into the market until I directed otherwise. He said he did not know as he should want to carry all the stock that he owned at the time of the annual meeting. I told him I would take my share of whatever he might wish to dispose of, in addition to what he might purchase. I think he said he would be willing to carry or own as much as the other directors, on an average. I think he does own as much as the other directors on an average, though I am not sure. Not long since he told me what my share would be, and I bought it of him; I think about 240 shares. I never purchased any stock of Isaac Spalding, and I have no knowledge of any associates purchasing any stock of him, or that he has ever sold any. This talk with Mr. Tower was since the annual meeting.

Q. 69. Was it or not agreed, at a meeting of the Board of Directors, held on or about the 12th day of July last, that 2160 shares of stock, then held by said Tower, Isaac Spalding and others, should be divided equally between yourself, Moody Currier, Edson Hill, Edward H. Spalding, William R. Spalding, Anson S. Marshall, James W. Johnson, John A. Spalding and John H. Pearson, making 240 shares each?

A. I do n't remember at any meeting of the Board of Di-

rectors, as such, that there was any such transaction. There has been such a division of the stock, in substance, as named. It was not so agreed on at any meeting of the Board. At the time it was done, others were present, and not all the members of the Board; not more than three, four or five. I do n't know that any of this Stock was owned by Isaac Spalding. He may have owned it, but I did not know it. If any stock that I have bought was transferred from Mr. Spalding to me, I had no bargain or conversation with Mr. Spalding on the matter. It must have been done by an arrangement with Mr. Tower. I have not taken my certificate from the Treasurer's office yet, though I suppose it is there. I think I have transferred it at the Treasurer's office, in blank, to be used as collateral security for a note.

Q. 70. For what reason was said 2160 shares divided equally between said nine persons?

(Objected to.)

A. I suppose it was for the reason that they all agreed to take it, the same as I did. I made my bargain with Mr. Tower, and suppose they did.

Q. 71. Did or not any of said nine persons object to taking their share of said 2160 shares, to your knowledge?

(Objected to.)

A. I do n't now remember as they did.

Q. 72. State how said nine persons paid for 240 shares of stock, each, so far as you know, and the price?

A. I think they all signed a note with Tower, Giddings & Torrey, to the Amoskeag Savings Bank for \$100,000, except Moody Currier—he did not sign it—all the same parties, except myself, signed a note to the Merrimack River Savings Bank for \$100,000, and this stock was pledged as collateral for the notes, though our bank did not require it, and were willing to take the notes without. Our President said the note was good for a million of money without collateral; Moody Currier signed the note to the Merrimack River Savings Bank. The banks let the parties have the money on the notes. I will state that we loaned the \$100,000 with the understanding that a part or the whole of it would be paid in a very short time. The notes had been written "on demand with interest;" but it was agreed that if the banks required, the market rate should be paid. I believe \$20,000 has been paid on the note to the Merrimack River Bank, and I understand the same amount has been paid to the other bank, on the other note.

Q. 73. By whom were said last named payments made?

A. I think Mr. Pearson made two payments on our notes, one of \$7,500 and one of \$2,500, and Mr. Tower said he should pay \$10,000 to-day, and I have no doubt he has. I was informed that the same payments were made at the other bank.

Q. 74. What number of shares of Concord stock were pledged to your two banks, by Mr. Johnson, to secure said notes of \$20,000 and \$22,500?

(Objected to.)

A. About 500; I can not state exactly now.

Q. 75. Was or not said stock purchased with the money your two banks loaned to Johnson on those notes?

(Objected to.)

A. I do n't think that stock was purchased with that money. I think I had the stock before the loan was made. I never allow any money to leave the bank before the bank has the security. The bank either had that stock, or some other, in its hands.

Q. 76. If it was not the same stock, where did you get the money with which to purchase it?

(Objected to, on the ground that he has previously stated all the money that he has borrowed or procured, to purchase Concord Railroad stock with, and otherwise incompetent.)

A. I have stated where I got all my money, and what I did with it; and I have farther stated that no money ever left the bank till the bank had notes and security for it.

Q. 77. If you have any where spoken, in this deposition, of holding 580 shares of Concord stock, or about that number, which was not pledged, in what answer did you so state?

(Objected to.)

A. I have no recollection of so stating. I always received the stock when I paid for it. The stock I took of Mr. Johnson was transferred in blank, and was sometimes not transferred for sometime afterward. I think when Mr. Johnson had the money, he delivered me the stock in general. In the case of these notes, I do n't remember whether the certificates were made to me, or whether it was stock in blank.

Q. 78. Did you have any 500 shares of stock at the time of said transaction between Johnson and your two banks, except stock which you then purchased of Johnson with the money those banks loaned to him? and was not the same stock pledged to the banks as security?

(Objected to.)

A. I think I had. Frequently Mr. Johnson gave me stock for which I gave him my receipt to be accounted for. I think at that time I had some 600 or 700 shares of stock. Mr. Johnson told me he had an arrangement with Mr. Henshaw to purchase stock for him, deliver it to him in blank, as he wanted it, and pay for it by installments, and that was the way I often received it of him. He took my receipt for it, till I raised the money to pay him.

Q. 79. For what reason, to whom and at what price, was said stock, that had been pledged to your two banks by Johnson, sold about two weeks ago?

(Objected to as immaterial.)

A. I took the notes, and the securities with them, to Boston. Mr. Johnson asked Mr. Tower what he would give him for that 500 shares of Concord Railroad stock. Mr. Tower said he would give \$80 per share. Mr. Johnson delivered it to him and took the money and paid the notes, and the draft for it was immediately passed to the credit of the banks. It was sold to pay the notes. I do n't know of any reason.

Q. 80. At the time of purchasing about 1200 shares of stock during the last winter or spring, did you consider it a profitable investment, at the prices paid?

A. I considered it a safe investment. As to profitableness, it would depend on how a man is situated; six per cent is a good investment for a man free of taxes—as good as State bonds, or United States bonds. United States six per cents sell in the market at 112—payable in currency. N. H. six per cent bonds are selling at par. I sold about two millions of N. H. six per cent bonds at par, when I was Governor, all subject to taxation.

Q. 81. When did you individually last make any investment other than your Concord Railroad stock purchases from which you did not expect to realize more than six per cent?

A. I do n't remember.

Q. 82. What was your object in purchasing about 1200 shares of Concord Railroad stock, a short time previous to the last annual meeting?

A. When I commenced purchasing that stock my objects were various. I did not expect, at that time, that there would be any change at the next annual meeting. I did not expect to purchase much more, if any, at any time, but intended to hold this as a safe investment and to use, at the annual meetings, as I might see fit. When it was suggested to me that by purchasing more stock we might probably have control of the management the present year, I thought, if purchasing a few hundred more shares would give us the control of the road, the present year, I was willing to make the attempt, and did so. When I had evidence that the then management of the road were collecting a large amount of proxies and was purchasing stock, I did not like to be beaten. I was told that we should be, if we did not buy more still. I think that that feeling, not to be beaten in the race, influenced me more in buying the large amount of stock I did, than any other one consideration. Had I known, at the start, that it would be necessary to purchase that amount, I should not have done it. That is the principal reason why I bought so much stock. There are others of minor importance. The result at the annual meeting shows that we need not have purchased so much as we did, to control it; and had I known that so many of the old stockholders would have voted for a change, I would not have bought so much. I had no expecta-

tion, in the purchase of this stock, of any pecuniary gains beyond my ten per cent. But I felt a desire to be in control of the road, for the same reasons that men usually have, to be in power.

(By Judge Fowler, of counsel for complainant.)

Q. 83. You speak of having originally bought stock, because you believed it to be a safe investment. State whether, if a new road were constructed from Manchester to Concord, in connection with the Manchester & Lawrence and Boston & Maine roads and the co-operation of the roads above Concord, how the value of Concord stock, as an investment, would be affected by the construction of that new road, and whether or not efforts have heretofore been made to procure a charter for such a road, and what part, if any, you took in those efforts?

(Objected to as incompetent, and as asking for the opinion of the witness on a matter entirely foreign to the issue, and as otherwise incompetent.)

A. I do n't feel competent to give a very reliable opinion on so important a question; but I will, according to the best of my judgment, say that I do n't think such a contingency is liable to happen; that I have no recollection of making any effort in any way to bring about such a result; but if it should happen, in my judgment, the Concord Road, with its present double track, splendid equipments, valuable property and valuable leases, with judicious and economical management, and with the large increase of business that in all probability will be drawn to it, it would pay ten per cent on the original cost. I give this opinion more upon the testimony of reliable railroad men, than from any knowledge of my own.

Q. 84. Do you mean to say that you have no knowledge that any such application was ever made to the Legislature for a charter for a new road from Manchester to Concord?

(Objected to as entirely immaterial.)

A. I do n't mean to say any such thing. I intended to say, and think I did say, that I had no recollection of making any such effort myself.

Q. 85. How many such applications, to your knowledge, have been made to the Legislature within the last twenty years, and state whether or not your name was used in connection with any such application, either as petitioner or as grantee in the charter?

(Objected to as before.)

A. I have no recollection, at the present time, of any such application, except from hearsay. I have no recollection of ever signing my name to any document of that kind, or of authorizing any body else to do it. I never heard that my

name was ever used as grantee in any such charter. If I ever did, it has escaped my recollection.

Q. 86. State whether or not, in the charter of the Concord Road, the State reserved the right to take the road at any time after twenty years, upon making up to the stockholders ten per cent dividends from the date of the original investment, and whether or not an application was ever made to the Legislature to exercise that right? if so, when, and by whom, and whether, if the State should exercise it, it would affect the value of the Concord stock as an investment, or not?

(Objected to as incompetent, and otherwise.)

A. There is such a provision. I think some time in the spring of 1867, Judge Upham called at my office, in Manchester, and called my attention to this provision, and said that he had given very careful consideration to the subject, and he believed that the State ought to receive some benefit from the large surplus that the Concord Railroad was earning. I answered the Judge that I knew nothing about it. How much is it earning? He said, it is earning from fifteen to twenty per cent over and above legitimate expenses. Now, said he, if the State would take the road, they might get out of it \$50,000 a year, and parties could afford to take the road from the State and run it for the interest of the public, as well as it is now run, and pay the State a handsome yearly sum, and this the State has a right to and ought to receive. I then said to the Judge that the first objection to the project or scheme to my mind was, that it would not be fair to the present stockholders to take their stock at \$50 per share when it was worth in the market the then price, which I do not remember. He answered me, I have carefully examined that subject and can relieve your mind on that point; that there were (and this was entirely new to me of course) in the early years of the road only six or eight per cent dividends made; and that it would take about \$30 a share to make up ten per cent to the stockholders to the present time, if interest was allowed on this difference between these back dividends paid, and ten per cent, and some other contingency which I do not remember; but in any event it would not be less than \$20 a share, making the stock \$70, which, if I recollect right, is about the price it was selling for. I made some other objection to it, and he went away and called again, and I think he called on me three times, when he again urged the arguments in favor of the State taking it, and asked me if I would be one of the grantees in a bill he had prepared. I answered him, no. I did not want to be bothered with it. He called a third time, brought a list of names, I should think twenty, whom I considered among the best men in the State, many of the leading men in Concord, if I remember right, some of them, at any rate, and said they

had consented to be grantees in the bill, and were interested in the scheme, and wanted the liberty to put my name in. I again refused. I think he staid an hour and argued it. I told him I would think of it and let him know when he called again. But I did not think I would bother with it. The fourth time he called, after long importunity, I believe I consented to let him put my name in the bill, though very reluctantly. The next knowledge I had of the bill I was informed that my name was at the head of the list of grantees. I felt indignant, and so expressed myself to the Judge the first opportunity I had to see him, for putting my name at the head of it. I told him then, and often told him before, that I did not believe his bill would pass—that I had no faith whatever that it would. I think during the session of the Legislature he wrote me as many as ten times, and telegraphed me about as many more, to come to Concord. I never came at all on one of the summons, but happening accidentally here at one time, he took me by the arm and said, "Come up into Marshall's office with me; we have got some of the friends of this bill up there that want to see you." I went with him and found some good men there. They wanted me to come up to Concord and help this bill along—said if I would come up and take my coat off it could be passed. I told them I did not believe it could pass and would not come up and touch it if it could. I had not had any thing to do with it and would not have. I have no recollection of ever speaking to a member of the Legislature on that subject, or to a Committee, and that is all I know about it.

According to Judge Upham's statement, which was all the knowledge I had or have on the subject, such action would not affect the value of the stock very much.

(The plaintiff objects to so much of the foregoing answer as is not responsive to the question.)

Q. 87. Please state the names of the gentlemen, friends of the bill, whom you and Judge Upham found in Marshall's office?

A. I do n't remember them all—Hosea Eaton was one, Judge Upham, Ruel Durkee, I think Anson S. Marshall was present, though I am not quite sure. There were some gentlemen whose names I did not know. I have stated the names of all that I remember; I can not state that all these gentlemen were friends of the bill—I think they were not; I presume they had been invited there, the same as I was. I do n't think I was in the room more than ten minutes.

Q. 88. How long, prior to May, 1866, had Judge Upham been at the head of the Concord Road as its President, or its Superintendent, and did the Concord Road, while under his control, ever pay more than seven or eight per cent dividends

annually, after the completion of the Manchester & Lawrence Road, about 1849?

A. I do n't know how long Judge Upham was President of the road—for a long time, I believe; neither do I know what dividends were paid under his administration.

Q. 89. Did the Concord Road ever pay more than eight per cent dividends after the completion of the Manchester & Lawrence Road, until 1866, after the election of the Board of Directors, turned out in 1870?

A. I do n't know. I had supposed it did.

Q. 90. What dividends did the Concord Road pay during the period after the completion of the Manchester & Lawrence Road, when the Manchester & Lawrence Road was run in opposition to the Concord Road? was it or not six per cent and no more?

A. I do n't know. I have no means of knowing that fact here—I could tell by the reports.

Q. 91. You say in substance, in your answer to a previous interrogatory, that you think the Concord Road would be able to pay ten per cent dividends, if a new road were constructed from Manchester to Concord, and run in opposition to it in connection with the Manchester & Lawrence and Boston & Maine roads and the roads above Concord; and that you form your opinion mainly upon the testimony of railroad men. Please state to what testimony of what railroad men you refer in that answer?

A. I never said any railroad men informed me or gave me an opinion that the road would pay ten per cent, in any such contingency. But railroad men and others have told me that the increase of business at Manchester and Concord, Suncook, and other places on the line of road, had been very large during the past three or four years especially, and I judged from that that if the road could pay ten per cent, and earn what Judge Upham told me it did, that by the time such a road could be built and completed, if ever, the increase of business might lead to that result.

Q. 92. When Judge Upham told you that the road was earning fifteen or twenty per cent, in the early part of 1867, did it occur to you to ask him why, when he controlled its affairs in 1863, 1864 and 1865, it had only been able to pay seven and eight per cent dividends, and that too, while, owing to the war, the travel was enormously greater than it was in 1867?

A. I did not ask him, for I never supposed he controlled it much. I supposed Gov. Gilmore controlled it pretty much.

Q. 93. Was he not its President, and legally entitled and bound to control its operations, as such, in connection with the Board of Directors?

A. I do n't know what his duties were as President.

Q. 94. Please state whether you think, that if the contract between the Concord Road and the Manchester & Lawrence Road were broken up, and that road run in competition to the Concord Road, in connection with the Boston & Maine Road, that the value of the Concord stock, as a dividend paying investment, would be injuriously affected?

A. I have not the means of forming a correct opinion on that matter. I am not an expert in such matters.

Q. 95. If, as a matter of fact, during the whole period that the Manchester & Lawrence Road was run in active competition with the Concord Road, the Concord road only paid six per cent dividends, and in fact did not wholly earn them, what would be your opinion upon the previous question?

(Objected to as incompetent, and otherwise.)

A. That is an assumption I do not think warranted by facts. I do not think the earnings of the road thus would be much evidence to my mind of what it is earning or might be made to earn at the present time. I have no further opinions on the subject at the present time.

Q. 96. Have you given all the answer to the two previous questions which you are able or willing to give?

(Objected to as immaterial.)

A. I am not prepared to give any further opinions on that subject, at the present time.

(Cross-examination by Joseph B. Clark, of counsel for the defendant.)

Q. 97. State whether or not, you are Cashier of the First National Bank in Manchester, and if so, how long you have held that position, and also if you are Treasurer of the Merrimack River Savings Bank?

A. I am Cashier of the First National Bank, and have been of that and of its predecessor, the Merrimack River Bank, since 1855. I have been Treasurer of the Merrimack River Savings Bank since 1858.

Q. 98. State what dividends have usually been paid to the stockholders of the First National Bank since its organization, and of its predecessor, the Merrimack River Bank?

(Objected to as immaterial and incompetent.)

A. I think about ten per cent.

Q. 99. What has been the usual rate of interest paid to the depositors of the Merrimack River Savings Bank?

(Objected to as before.)

A. I think it has averaged about seven per cent per annum.

Q. 100. Have you ever heard any complaint made by any of the stockholders of the First National Bank, or any of the depositors of the Merrimack River Savings Bank, that you have in any way mismanaged said banks?

(Objected to as before.)

A. Never one word.

Q. 101. Have you not always had the general management of loaning the money in both of said banks?

(Objected to as before.)

A. I have.

Q. 102. You have already stated that Concord Railroad stock had been pledged to said banks as collateral security. Did ever either of said banks claim any right to said Concord Railroad stock, other than as such collateral security?

(Objected to as before.)

A. Never.

Q. 103. Why was the money obtained from said banks, to purchase said Concord Railroad stock, rather than from other sources?

(Objected to as before.)

A. Because it was the best temporary disposition the banks could make of the money at that time, within the State.

Q. 104. Did not both of said banks, at that time, have a large amount of money on hand to loan, coming into the bank from the sale of U. S. Government bonds, which you were instructed to sell, and from other sources?

(Objected to as before.)

A. I think that was so.

Q. 105. Did you not offer to pay the notes to said bank, which were secured by Concord Railroad stock? and if so, why did you not pay them?

(Objected to as before.)

A. I called a meeting of the board of investment in the early part of June, and proposed that Mr. Johnson would pay his notes, and Mr. Currier his, I believe, if they desired; and asked for instructions what I should do with the money, if paid. They unanimously decided they would prefer to have the notes remain for the present. I made the same proposition to the investing committee of the Directors of the First National, as to the Johnson note of \$22,500, and received the same answer, in substance.

Q. 106. Did either of said banks make any other loans about that time, at the legal rate of interest. If so, state to whom such loans were made and what amounts were so loaned?

(Objected to as before.)

A. We did. I think a majority of the loans made about that time were at six per cent, legal interest. I can not state them without my books. I remember one of \$20,000 to Cha's Amory, Treas. Manchester Print Works. I can't say, however, whether it was \$10,000, or \$20,000.

Q. 107. Did you ever borrow any money of the Amoskeag National Bank, or the Amoskeag Savings Bank, other than that used in the purchase of Concord Railroad stock? If so, when, and what amounts?

(Objected to as before.)

A. I have borrowed a great deal of the Amoskeag Savings Bank; can't state how much. In 1854, I think, I borrowed all the money to purchase the lot on which Smyth's Block stands, and nearly all the money to build it. I think about \$40,000. I have borrowed money since, but can not tell how much, or when.

Q. 108. Have you ever borrowed money from the other banks in Manchester? If so, from what banks, and what amounts, as nearly as you can recollect?

(Objected to as before.)

A. I have often borrowed money of the City Bank and City National Bank. I can not remember the amounts, or when.

Q. 109. Is it an unusual thing for the officers of the banks in Manchester to hire money from the banks with which they are not connected?

(Objected to as before.)

A. It is not. It is a very common thing. Capt. Harrington, Cashier of the City National, and Treasurer of the City Savings Bank, has borrowed money of our bank. I think I have loaned Mr. Stanley, the President, money. I have loaned Mr. Newell, President of the Manchester Savings Bank, money, and many others of the officers of the other banks, from time to time; also, John H. Maynard, Director of the Manchester National Bank, often.

(By Mr. Charles R. Morrison, of counsel for the same.)

Q. 110. In answer to interrogatory 42, you say "that you had intended to have money from a man in New-York." Have you letters from him on that subject, written at the time? and if yes, will you produce them, and annex a copy to this deposition?

(Objected to as before.)

A. I have letters, written in answer to an application, not long after the loan was made, for money with which I intended to pay all the notes at banks, where I had Concord Railroad stock pledged. They are as follows:

Union Trust Company, New-York,
73 Broadway, corner of Rector st.,
New-York, June 2, 1870.

Hon. FREDERICK SMYTH,
Manchester, N. H.:

Dear Sir—

I intended to have written you on yesterday, but pressing engagements, in consequence of my previous absence from the office, prevented. I can make you the call loan of which we were speaking, say \$20,000, \$40,000, or more, if you may need, at six per cent, with the understanding that it shall remain three months,

should you so desire it to stand, the collaterals to be Concord Railroad stock, with liberal margin, the interest to be advanced to seven per cent, should that rate prevail here in the mean time. Any day will suit us to make the loan.

Very truly yours,
(Signed) I. H. FROTHINGHAM,
President.

The next letter, with the same heading :

New-York, June 10, 1870.

HON. FREDERICK SMYTH,
Manchester, N. H.:
Dear Sir—

Yours of yesterday is in hand. We usually receive a margin of from twenty to twenty-five per cent, at market price, over the amount of the loan we make. In making the collateral we can value the Concord stock at sixty, or thereabout, which will be entirely satisfactory.

Very truly yours,
(Signed) I. H. FROTHINGHAM.

In conversation with Mr. Frothingham, in relation to this matter, he informed me that they were in the habit of loaning upon the certificates of stock, without any note, and would prefer to do so in this case. The reason why I did not complete the negotiation was, that Mr. Currier informed me, when I applied to pay the note at the Amoskeag Bank, in June, that they would prefer to have it remain, and as I have before stated, the investing committee of the bank, with which I am connected, preferred that their notes should remain. And as Mr. Frothingham had informed me, in conversation, that at any time I could have the loan there on terms similar to those named in the letter, and on longer time, if I desired, I did not make the loan of him. I propose to, however, as soon as I can conveniently go to New-York, and with it to pay my note at the Amoskeag Savings Bank.

Q. 111. In obtaining any money from the banks mentioned in the plaintiff's bill, or any of them, did you, or either of those connected with you in the purchase of stock, so far as you know or believe, consciously commit any breach of trust, or induce any other person to commit any breach of trust, the banks having the money to loan and obtaining ample security? (Objected to as before.)

A. I never did, and I have no knowledge or belief that they ever did. I never loaned or consented to a loan from any bank with which I am connected, except for the best interests of the bank, according to my best belief and judgment.

Q. 112. Was the contemplated use to which the money should be put in any way concealed from any of the officers of the banks? and how soon after the obtaining of the loans had the banks knowledge of the use to which it was put?

(Objected to as before.)

A. It never was concealed from the officers or any one else. It was talked about freely among us. The President and some of the investing committee knew what use was to be made of it before the loan was made. I told them of it distinctly, and also told them that I expected to have part of the money.

Q. 113. You have stated that none of the banks have ever made any claim upon the stock purchased with money obtained from the banks, except as collateral security. Do you know of any advantage that the banks could derive by setting up a claim to the stock, instead of the money, and taking it off of the hands of the purchasers at the prices paid?

(Objected to as before.)

A. I do not.

Q. 114. You have spoken of a desire to obtain the control of the Concord Railroad. Did you, or those acting with you, so far as you know or believe, intend to obtain the control by any unlawful means, or for any unlawful purposes?

(Objected to as before.)

A. I did not, and I do not believe they did.

Q. 115. Did you, or those acting with you, so far as you know or believe, intend to run or use the road contrary to law, or in any way to the prejudice of the stockholders or the public?

(Objected to as before.)

A. We never did.

Q. 116. What was your and their expectation and intention in respect to fares and freights?

(Objected to as before.)

A. We expected to reduce the fares and freights, as soon as we got control.

Q. Do you know how or by what means the reduction of fares came about, and at what time was said reduction, with reference to the movement for a new board?

(Objected to as before.)

A. About the time we were buying stock, people asked me what we were going to do, and I told them we were going to reduce the fares and freights. Soon after that I heard that they had done it. It was said to me that they had taken the wind out of our sails; I acknowledged the corn, and said I hoped we should be able to make a still further reduction. Just before it was done, a gentleman said he met one of the old Directors in the cars, and he said they were going to reduce it. I am informed that a reduction had been some time before, during the administration of this board.

Q. 118. What was the expectation and intention of those concerned in getting in the new Board in respect to the expenses of the road and of its general management, so far as you know?

(Objected to as before.)

A. I expected and intended, if I had any thing to do with it, that it would be run in the most economical manner, its rolling stock improved, its bed ballasted much better than it is now or ever has been, kept in the best condition as a first-class road in every respect, reduce, in a great measure, the free passes over the road, and after paying ten per cent dividend to stockholders, reduce the fares and freights as low as possible. I intended that the most liberal fare and equitable arrangements should be made with the connecting roads, especially with the upper roads connecting at Concord. The intentions of the others were similar, so far as I knew. I wish to add that I intended that the road should assist and encourage, so far as they could legally do it, the building of the proposed branch roads, such as the Sugar River, Concord & Rochester, and extension of the Suncook Valley. I never intended or expected to receive one dollar of pecuniary advantage except from the ten per cent dividends on my stock.

Q. 119. Was there, on the part of any of you, any intention by any means to consolidate the stock of the Concord Railroad with any other railroad, as charged in the plaintiff's bill?

(Objected to as before.)

A. There never was on my part, and according to my best knowledge and belief there was not on the part of any who voted for the new Board. On the contrary, I have heard every member of the present Board of Directors, with the Clerk and Treasurer, express themselves decidedly opposed to such consolidation.

Q. 120. Did the enterprise for getting in a new Board of Directors contemplate the attaining of any other than *bona fide* actual votes from actual stockholders, and were there any votes cast for the new Board, to your knowledge, not from actual and *bona fide* stockholders?

A. No.

Q. 121. Were you present at the annual meeting when the vote was passed upon the resolutions introduced by Judge Cross, instructing the new Board to take possession of the road, without regard to the contract attempted to be made by the old Directors, and if yea, please state whether that vote was unanimous?

(Objected to as before.)

A. I was present; according to my best recollection the vote

was unanimous, or nearly so. I don't think there were any opposing votes.

Q. 122. Was there any intention or expectation on the part of any of you, of increasing the capital stock?

A. There was not.

Q. 123. Did you understand that the capital stock could not be increased without the consent of the Legislature?

(Objected to as before.)

A. I never believed or understood that it could possibly be increased under any circumstances, without the action of the Legislature. I never heard any person intimate such an idea, until I heard we were charged with such motives.

Q. 124. Do you desire to make any further answer to Int. 79?

A. In answer to Int. 79, I wish to add, after the last word, "Except I wanted the notes paid, and wished to have them paid from the proceeds of the collaterals."

Q. 125. Do you wish to say any thing further in answer to Int. 83?

A. I wish to add that I do n't think there is any probability, or hardly a possibility, that any Board of Directors of the Concord Road will ever be so short-sighted and foolish as to refuse the upper roads, connecting at Concord, such arrangements and connections and accommodations as would compel them or induce them to favor the building of another road between Concord and Manchester, believing, as I do, that the Concord Road can afford, and it will be for its best interests, to carry the freight and passengers of those roads at a very much less rate than it could possibly be done by the building of another road.

Q. 126. The plaintiffs say, in their amended bill, that the new Board are not legally elected Directors. Is there, to your knowledge, any opposing claim by any other person or persons to the office of Director?

(Objected to as before.)

A. I never heard of any. If there is, I should like to know on what they ground their claims.

Q. 127. Have any steps, to your knowledge, ever been taken by any stockholder of the Concord Road to set aside your election as Director as illegal? and have you ever heard of any such claim, till the amended bill?

A. Never.

FREDERICK SMYTH.

MERRIMACK SS.,

Sworn to before me,
SAMUEL C. EASTMAN,
Commissioner and Justice of the Peace.

I, WILLIAM W. STORRS, of Concord, in the County of Merrimack and State of New-Hampshire, depose and say as follows, in answer to the following interrogatories :

Interrogatories proposed by Hon. John Y. Mugridge, counsel for plaintiff.

Q. 1. What position, if any, do you hold in connection with the National Savings Bank at Concord, and also with the First National Bank at said Concord, and how long have you occupied such position?

A. I am Treasurer of the National Savings Bank, ever since its commencement, and Cashier of the First National Bank since its commencement.

Q. 2. State whether on or about the 8th day of February, 1870, Anson S. Marshall obtained a loan at said Savings Bank? if so, for what amount, and what collateral, if any, was put into the hands of the bank to secure said loan?

(Objected to.)

A. A loan of \$3,000 was procured by him February 30, 1870, with collateral of Hartford & Erie bonds.

Q. 3. How was said note payable, and what amount of said bonds was so lodged as collateral?

A. The note was payable four months after date; \$10,000 in bonds was lodged as collateral.

Q. 4. What were said bonds selling for in the market at the time the loan was made, and what are they selling for to-day? and was there any other signature save said Marshall's to said note?

A. I do not remember the exact figure at which the bonds were selling at that time, though I think near forty cents on a dollar. I do not know what they are selling for to-day. There was no other signature save Marshall's to the note.

Q. 5. Was not the last quotation of the sale of said bonds at the Brokers' board twenty-three and a half? and has there not been a very material reduction in the value of said bonds in the market since they were pledged as aforesaid?

A. I have not noticed the quotations of the Brokers' Board for two weeks, of the Hartford & Erie bonds. I have heard stated that the bonds were selling at much less than when the loan was made.

Q. 6. What was the rate per cent upon which said loan was made, and has any portion of the interest on said loan been paid in advance? if so, how much?

A. The rate of interest was seven and a half per cent. Interest paid to October 3d. Eight months.

Q. 7. Has any part of the principal been paid by said Marshall?

A. Not any.

Q. 8. Did said Marshall and John L. Tallant obtain a loan

of \$12,000 at said National Savings Bank? if so, what was the date of said note, and did the bank have any collateral for the same?

A. Mr. Tallant obtained a loan, with Mr. Marshall as under-signer; the date of the note is March 8, 1870, with no collateral security; the note is payable in four months.

Q. 9. What was the rate per cent upon which said loan was made by the bank?

A. Seven and a half per cent.

Q. 10. Did said Marshall, John H. Pearson, Frederick Smyth, and James W. Johnson, obtain a loan at said bank for \$25,500? if so, what was the date of that note, and by whom was it signed, and when made payable?

A. They did. It was signed by Frederick. Smyth, J. H. Pearson, J. W. Johnson, and Anson S. Marshall. It is dated March 15, 1870, and made payable on demand.

Q. 11. What was the rate per cent upon which said loan was made by said Savings Bank?

A. Seven and a half, I suppose, that being our rate of discount at the time the loan was procured.

Q. 12. State whether or not three hundred shares Concord Railroad stock was pledged as collateral for said loan?

A. There were three hundred shares pledged.

Q. 13. Has there been any formal and proper transfer of said stock, according to law, made to said bank? or is it held by said bank indorsed in blank?

(Objected to as inquiring for the contents of a written document, and also for legal opinions, and also as incompetent generally.)

A. It is held by said bank, indorsed in blank; it was supposed to be in accordance with law.

Q. 14. Is John H. Pearson, Anson S. Marshall, and John L. Tallant, each a trustee in said Savings Bank?

A. They are all members of the corporation, and are all trustees.

Q. 15. Who are the Investing Committee of said Savings Bank?

A. Mr. Marshall, Mr. Enos Blake and William Walker, in connection with the President and Treasurer.

On cross-examination, by William M. Chase, Esq., deponent says as follows, in answer to the following interrogatories:

Q. 16. Did Mr. Marshall ever at any time meet with the Investing Committee to your knowledge, and did you ever know John H. Pearson and John L. Tallant to meet with the trustees of said bank?

A. I never did know Mr. Marshall to meet with them, nor take any part in making any loan whatever. I never knew John H. Pearson and John L. Tallant to meet with the trustees.

Q. 17. Do you know, and did any other officer of the National Savings Bank, aside from the signers of said notes, know, to your knowledge, what use was to be made, or what use was actually made of the \$3,000 that Mr. Marshall obtained Feb. 3, 1870, the \$12,000 that Mr. Tallant obtained March 8, 1870, and the \$25,500 obtained upon the note mentioned in your answer to Inter. 10, or any portion of said sums?

A. I did not know, nor do I know that any of the other officers knew; the loans were made like all other loans, without asking questions as to what use the funds were to be made.

Q. 18. Who decided as to whether said several loans should be made?

A. A majority of the trustees at the meetings at which the loans were proposed.

Q. 19. Did Mr. John H. Pearson, Mr. John L. Tallant, Mr. Anson S. Marshall, and Mr. James W. Johnson, or either one of them, act as an officer of the bank in any capacity at the time when said loans or either of them were made, in deciding whether they or either of them should be made by the bank?

A. There were none of the parties named present but James W. Johnson, when either of these loans were made. Mr. Johnson did not vote the loan of \$25,500, but if present when the other loans were made, I presume he approved them. James W. Johnson was present at the time Mr. Marshall got the loan of \$3,000. Enos Blake, William Walker, Peter Dudley, Benning W. Sanborn and George A. Pillsbury were also present.

James W. Johnson was not present when the loan of \$12,000 was made to Mr. Tallant. Peter Dudley, Benning W. Sanborn, Enos Blake, George A. Pillsbury, Timothy Haynes and William Walker were present at that time; I find no record of the other note on my book.

Q. 20. Was there ever any agreement, understanding, or combination, directly or indirectly, to your knowledge, between any officers of the National Savings Bank and any of the persons who were elected directors and other officers of the Concord Railroad; at the last annual meeting thereof, or who voted for such directors and officers at said meeting, whereby funds were to be furnished to any such persons, or any one else, to purchase Concord Railroad stock with.

A. No, sir; there was not?

Q. 21. When was the last four months' interest on the \$3,000 loan to Mr. Marshall paid? Has any thing been paid on the note of John L. Tallant, mentioned by you? if so, how much, when, and by whom?

A. It was paid June 23d, on Mr. Marshall's loan.

July 18, 1870, John L. Tallant paid me, on the note of \$12,000 eight thousand five hundred dollars.

Q. 22. Do John H. Pearson & Co. do their banking business in part with the First National Bank, of which you are Cashier? if so, how large a balance stands to their credit to-night, how much have they withdrawn during the day, and state what sum they usually have in the bank?

(Objected to as immaterial, of no sort of consequence, and otherwise incompetent.)

A. They have kept their account with us for the last four months; \$16,000 stand to their credit to-night; they have withdrawn between \$11,000 and \$12,000 during the day; they keep a good account generally; I could not tell their usual balance.

Direct examination resumed.

Q. 23. State whether James W. Johnson is also a director in the First National Savings Bank of Concord, and whether said Savings Bank and First National Bank are kept in the same room?

A. James W. Johnson is a Director in the First National Bank. The business of both the First National Bank and the National Savings Bank is done in the same room.

Q. 24. State whether, at the same meeting of the trustees when the note of \$12,000 was discounted for Mr. Marshall and Mr. Tallant, notes to the amount of \$15,000 were discounted by the same bank for Mr. James W. Johnson?

(Objected to because the question assumes that the note referred to was discounted for Mr. Tallant and Mr. Marshall, whereas the witness says in his answer to Inter. 8, that the loan was obtained by Mr. Tallant, with Mr. Marshall as undersigner, and because the question misrepresents the witness to this extent.)

A. There were notes to the amount of \$15,000 discounted at that meeting, indorsed by James W. Johnson.

Q. 25. Did James W. Johnson present said notes for discount? were they discounted at his request, and did he have the money?

A. I think they were presented by him, and discounted by his request, but whether for his benefit or not I don't know.

Q. 26. Do you know of any one else who was benefited by that discount, save James W. Johnson, if so, name them?

A. I don't know for whose benefit they were.

Q. 27. Do you know of any other man than James W. Johnson who was benefited by that loan? if so, name him?

(Objected to because the witness has already stated about that, so far as he knows.)

A. I don't know whether James W. Johnson was benefited by it or the undersigner of the note. The paper was presented by James W. Johnson; whether he had the money or not, I don't know.

Q. 28. At the time said discounts were procured by Mr. Johnson, did he suggest to you that any body, save himself, was to be benefited by the loan? if so, who did he name?

A. He did not say for whose benefit the money was.

Q. 29. Who did you understand was benefited by that loan, the signers of that note or Mr. Johnson?

A. I do not know.

Q. 30. Do you mean to swear here that you did not then have, and do not now have, any impression on that subject?

A. The money might have been for Mr. Johnson and might have been for the signers; I have no direct means of forming an impression.

Q. 31. Will you swear that you did not, at the time said loan was made, and do not now, understand for whose benefit it was made?

A. I do not know for whose benefit the loan was made; I did not understand for whose benefit the loan was made.

Q. 32. Is James W. Johnson indebted to-day to the First National Bank in Concord? if so, how much, as nearly as you can state?

(Objected to as immaterial and of no sort of consequence,

A. I do not know the exact amount, but think that \$10,000 will cover his indebtedness.

Cross-examination resumed.

Q. 33. Who were the signers of the note or notes mentioned in your answer to Interrogatory 24? describe said notes generally?

A. Simons, Amsden & Co., two months, \$5,000; another for three months, \$5,000; O. A. Bingham & Co., \$5,000 for three months.

Q. 34. Who are said signers? have said notes been paid? and for how long a time has Mr. Johnson been in the habit, if at all, of getting notes signed by said parties discounted at your bank?

A. I think they are parties living in Boston, and wool dealers. These notes have been paid. He, Mr. Johnson, has been in the habit of having such paper discounted since the commencement of the bank, from time to time.

Q. 35. How many shares of the capital stock of the First National Bank does J. W. Johnson own, and what is the par value of such shares? and state whether he has done more or less of his business with said bank since its start?

A. I think he owns fifty shares; I am not certain. The par value of the shares is \$100. He, Mr. Johnson, has done more or less of his business with said bank since its start.

Q. 36. Describe in a general, way how extensive Mr. Johnson's

business with the bank has been since the organization of the bank?

(Objected to as incompetent.)

A. It has not been very extensive; he has sometimes had a large deposit, but no regular average deposit.

Direct examination resumed.

Q. 37. Do you know whether any of Mr. Johnson's stock in said bank is hypothecated or pledged?

A. I do not know that it is.

Q. 38. Is it customary for your National Savings Bank, and are you in the habit of discounting business paper, of the kind Mr. Johnson presented, for persons in general?

A. It is customary, and we have discounted a good deal of business paper, but seldom over \$10,000 for any one man.

Q. 39. Can you name any other man, save James W. Johnson, who ever got at any one time business paper to the amount of \$15,000 discounted at said Savings Bank, without collateral security?

A. I do not think of any one man

WM. W. STORRS.

I, CHARLES WILLIAMS, of Manchester, in the County of Hillsborough and State of New-Hampshire, do depose, testify and say, in answer to interrogatories proposed, as follows :

Interrogatories proposed by John Y. Mugridge, Esq., counsel for the plaintiff.

Q. 1. Are you a trustee of the Merrimack River Savings Bank, located at Manchester, N. H., and how long have you held that office?

A. I am a trustee of the Savings Bank, and think I have been a trustee three or four years ; I can't say certain.

Q. 2. Do you own any Concord Railroad stock?

A. I do ; forty shares.

Q. 3. Did you vote on it at the last meeting for choice of directors of the Concord Railroad

A. Yes, sir.

Q. 4. For which board, the present board or the old board, did you then vote?

A. The present board.

Q. 5. Who did you buy said forty shares of stock of?

A. Frederick Smyth.

Q. 6. When did you buy them?

A. I think about the first of May, 1870.

Q. 7. What did said forty shares of stock cost you?

A. I paid \$81 per share.

Q. 8. Did you have any other stock beside said forty shares in said railroad, at any time? if so, how much?

A. I have had fifty shares at one time ; I bought fifty shares and sold ten shares.

Q. 9. To whom did you sell said ten shares, and when?

A. I sold ten shares to Atherton W. Quint shortly after I purchased them.

Q. 10. How much did Quint pay you for the shares, and how did he pay it?

A. He paid me \$85 per share, and gave me his note. He has not yet paid the note.

Q. 11. Where did you raise the money to pay for the said fifty shares, which you bought of Mr. Smyth?

A. I borrowed the money of the First National Bank in Manchester.

Q. 12. Did you obtain, directly or indirectly, any part of said money from the Merrimack River Savings Bank, or any other Savings Bank in this State?

A. No, sir, neither directly or indirectly.

Q. 13. Is Frederick Smyth Cashier of the said First National Bank?

A. Yes, sir.

Q. 14. What security, if any, did you give said bank for said loan?

A. I gave them my note and fifty shares of Concord Railroad stock as collateral.

Q. 15. Have you paid any portion of said note, or the interest thereon?

A. No sir.

Q. 16. At whose suggestion, if any one's, did you buy said stock? ◆

A. No, one suggested it to me; I suggested it myself. I asked Governor Smyth to get it for me.

Q. 17. What interest do you pay on said loan to said bank?

A. I told the Governor I would pay six and one half per cent, but he said he couldn't loan it as low as that, and he would probably have to charge me seven per cent. I have no doubt he will charge me seven.

Q. 18. What was your object or purpose in buying said stock?

A. I thought I could make some money on it, and thought it was a good thing to have.

Q. 19. How did you expect to make money on it?

A. Well, I bought it for \$81 per share, dividend off, and sold ten shares at \$85 per share, making forty dollars upon that.

Q. 20. Can you state any other way that you expected to make money on it, other than that you have stated?

A. I know of no way, unless it advanced and I sold it.

Q. 21. Have you signed, at any time, any notes to any Savings Banks for any party to obtain money to buy Concord Railroad stock with?

A. No, sir; never.

Q. 22. Do you know whether the money paid for your stock came from the Savings Bank, or the First National Bank, in fact? and did any body sign said note with you?

A. I hired the money from the First National Bank, and supposed I got it from that. No one signed the note with me.

On cross-examination deponent says as follows, in answer to the following interrogatories:

Interrogatories proposed by Hon. Harry Bingham, of counsel for defendant.

Q. 23. Are you doing a somewhat extensive business, and have you been for some years past, requiring bank accommodations? if so, at what bank do you get such accommodations?

A. I am doing considerable business, on a small scale, and always get such accommodations as I need at the First National Bank, at Manchester, and that is the only place.

Q. 24. Have you had more or less familiarity with the business of that bank and the customers whom they accommodated?

A. I know a good many of their customers, but can't say as to the amount of their accommodations.

Q. 25. Did you know or hear of any combination or ring of any sort, formed for the purpose of getting money out of savings banks, or banks of any kind, for the purpose of buying railroad stock, at any time prior to the annual meeting of the Concord Railroad Corporation?

A. I knew that Moody Currier borrowed some money out of the Merrimack River Savings Bank, and James W. Johnson borrowed some for Governor Smyth—at least I understood it was for Governor Symth; I don't know of any ring or combination being formed.

Direct examination resumed.

Q. 26. Were you one of the Investing Committee of the Merrimack River Savings Bank that approved the loans made to Moody Currier and others, to buy stock with?

A. Yes.

Cross-examination resumed.

Q. 27. Were these loans referred to in your last answer, made in the usual way, so far as you know, on good securities, or on securities which you believed to be good and undoubted?

A. Yes. The Investing Committee were called together in the usual way; they were loaned, on call, as we did to other parties at that time, to the Manchester Print Works and other parties.

CHARLES WILLIAMS.

I, EDWARD H. PAINE, of Manchester, in the County of Hillsborough and State of New-Hampshire, testify and say as follows, in answer to the following interrogatories :

Q. 1. (*By Hon. Asa Fowler, of Concord, for plaintiff.*)

Please state what is your employment or business, and what it was at the last annual meeting of the Concord Railroad Corporation, May 24, 1870.

A. I am clerk of the Manchester National Bank, and treasurer's clerk of the Manchester Savings Bank, and was treasurer's clerk of the Concord Railroad, at the time of the meeting.

Q. 2. Please state whether as clerk of the Treasurer of the Concord Railroad Corporation, you attended the last annual meeting of said corporation, assisted the committee appointed to assort and count the votes, in checking the names of the stockholders voting, and whether or not, after the balloting, the ballots came into your possession as such clerk, and were examined, and analyzed by you, and if so, whether from that examination you are able to state the whole number of stockholders in the corporation at that time, the whole number of stockholders present or represented voting for the old board, the whole number of stockholders present or represented voting for the new board, the number of shares of stock voted upon by members of the new board and their families, including the treasurer and clerk, and the number of shares voted upon by persons associated with members of the new board, and for which board of directors, the old or the new, did the members of the new board and their families and associates vote, giving the names and numbers of shares voted upon by members of the new board, their families and associates ; if so, please state the result of your examination and analysis, giving the same in such order as will be most convenient to you..

(Objected to by counsel for defendants, because it inquires for matters that are wholly immaterial in this action ; because also, if they were material, this witness is not a proper person to prove them by, because the question is leading, and because of other reasons.)

A. I did attend the last annual meeting of the Concord Railroad Corporation, as clerk of the treasurer of the road ; I assisted to check the ballots ; the ballots went into the treasurer's hands ; afterward I examined and analyzed the votes as follows :

Number of Stockholders or Persons voting	
For Old Board,.....	181
By Proxies,.....	293
Total.....	474

Number of Stockholders or Persons voting	
For New Board,	148
By Proxies,	73
Total,	221
Total Number of Stockholders,	1220
Not voting,	525
Number of shares held by sundry persons, and voted upon by them as follows :	
Isaac Spalding	500
Frederick Smyth	1216
John H. Pearson	1179
Mary A. Pearson (his wife)	236
Charles C. Pearson (his son)	100
James W. Johnson	325
Susan A. Johnson (wife)	250
Harriet E. Johnson (daughter)	21
Edson Hill	504
Olive J. Hill (wife)	100
William R. Spalding	112
William A. Tower	2430
Moody Currier	500
Amoskeag Savings Bank	122
Anson S. Marshall	266
George Clough	1402
National Savings Bank, Concord	754
City Savings Bank, Nashua	500
John A. Spalding	98
Joseph B. Clark	216
Charles H. Bartlett	50
Charles Williams	40
James R. Hill	245
George W. Riddle	101
John Kimball	133
Dana Sargent	100
Natt Head	100
Ellsworth Torrey	100
Reed P. Silver	100
E. L. Knowlton	100
Eliphalet Nutter	92
C. C. Southard	50
Shares voted upon by the New Board, Treasurer, and Clerk	
Number of shares by members of families of New Board	7,032
Total	7,739

Number of shares bought by new Officers.....	6,738
Bought by their families.....	686
Number of shares held before.....	437
Total	<u>7,861</u>

All the parties above enumerated voted for the New Board.

(Cross-examination by Anson S. Marshall, of counsel for the defendant.)

Q. 3. How did you obtain the list of votes which you have given in answer to Int. 2, and the names of the parties, and how did you make the same up?

A. I made it from the ballots.

Q. 4. You say, in answer to Int. 2, two hundred and ninety-three stockholders were represented by proxies, which were voted for the old board; how many shares of stock were represented by said two hundred and ninety-three proxies? Can you tell from any means that you have in your possession? If so, will you state, and also state, if you can, the number of ballots to which said proxies were attached?

A. I can not tell how many shares of stock were represented by said proxies. I can tell from memoranda in my possession, but can not tell the number of ballots or number of persons casting the same.

Q. 5. Will you examine said ballots cast for said old board, and state whether you can identify the ballots, on seeing them as being such as you assisted in counting, and then state the number of ballots, and the number of proxies annexed to each ballot that were voted for said old board, giving first the ballots on which one hundred shares were voted, the number of proxies annexed to each, and the person by whom said ballots were voted?

A. I can. I have counted such as have been furnished me. There seems to be fifteen of one hundred shares each that voted for the old board. They are voted as follows: Ballot of A. C. Pierce, proxy for eight stockholders; ballot of N. S. Batchelder, proxy for four stockholders; ballot of Stephen Webster, proxy for seven stockholders; ballot of Rossiter Johnson, proxy for two stockholders; ballot of John A. White, proxy for fourteen stockholders; ballot of A. G. Jones, proxy for thirteen stockholders; ballot of Geo. H. Hutchins, proxy for eight stockholders; ballot of Geo. H. Silsby, proxy for four stockholders; ballot of H. F. Hill, proxy for six stockholders; ballot of J. L. Mason, proxy for eleven stockholders; ballot of Allan H. Robinson, proxy for six stockholders; ballot of J. W. Hill, proxy for nine stockholders; ballot of Geo. E. Jenks, proxy for six stockholders; ballot of Benjamin Grover, proxy for eight stockholders; ballot of Franklin Mosely, proxy for one stockholder. The

whole number of stockholders, represented by said fifteen ballots is one hundred and seven, and the number of shares is fifteen hundred.

There were three ballots as follows : one of Francis A. Gordon, proxy for one hundred and ninety shares, owned by one stockholder ; one of John M. Hill, proxy for one hundred and forty-three shares, owned by one stockholder ; one of Benjamin Adams, proxy for one hundred and forty-one shares, owned by four stockholders. The last ballot was counted as one hundred shares, by order of the committee. I presume the others were cut down in like manner, but I can not say as to it. There is one other ballot of Luther S. Morrill, proxy for one hundred and four shares, owned by one stockholder. I presume that was counted as one hundred only, but I do not know. The number of shares represented by these four proxies is five hundred and seventy-eight, which were counted, as I suppose, as four hundred shares.

Two more ballots were, one of O. C. Fisher, proxy for fifty-five shares of three stockholders and forty-five shares of his own ; one of L. D. Stevens, proxy for ninety-nine shares, owned by ten stockholders ; making one hundred and fifty-four shares on said proxies ; one more of William Barrett, proxy for one hundred shares, owned by one stockholder.

There seems to be nineteen ballots of twenty-five shares and upward : viz.,

One of Geo. E. Todd, proxy for 27 shares of 2 stockholders.

" E. A. Abbott	"	"	32	"	"	2	"
" John F. Chase,	"	"	25	"	"	1	"
" F. G. Allen,	"	"	43	"	"	5	"
" John H. Elliott,	"	"	57	"	"	5	"
" Phinehas Adams, Jr.,	"	"	43	"	"	7	"
" J. S. Wiggin,	"	"	64	"	"	6	"
" D. C. Gould, Jr.,	"	"	37	"	"	5	"
" Daniel H. Parker,	"	"	26	"	"	4	"
" Edward C. Damon,	"	"	26	"	"	6	"
" B. Pillsbury,	"	"	54	"	"	1	"
" E. Langdell,	"	"	40	"	"	1	"
" Nelson Ordway,	"	"	60	"	"	1	"
" Isaac W. Smith,	"	"	44	"	"	1	"
" N. Goodhue,	"	"	53	"	"	1	"

and 20 in his own right.

" S. B. G. Courser,	"	"	50	"	"	2	"
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and sixteen in his own right.

" G. H. Kimball,	"	"	39	"	"	4	"
" L. W. Nicholls,	"	"	44	"	"	3	"
" Edwin Flanders,	"	"	64	"	"	3	"

and ten in his own right.

making nineteen ballots and

828 shares 60 stockholders

and forty-six shares in the right of the voters, making the total number of shares thus far enumerated as voted by proxy for the old board, two thousand nine hundred and eighty-two, owned by one hundred and eighty-seven stockholders.

I find, in other ballots presented to me, that were voted for the old board, sixty ballots, proxies for six hundred and thirteen shares, owned by eighty-two stockholders. This makes in all, three thousand five hundred and ninety-five shares, owned by two hundred and sixty-nine stockholders.

For the new board, of the ballots presented to me, there were sixty-seven ballots, representing seven hundred and eighty shares, owned by seventy-three stockholders.

Of the tickets presented to me, there were split ballots, part for the old board and part for the new, voted by proxy, which have not been counted at all in the above enumeration.

Of the sixty-seven ballots for the new board, forty-three voted on less than ten shares, and of those forty-three, thirty-one voted on less than five shares each.

The whole number of votes cast, as appears by the record, was twenty-five thousand eight hundred and sixty.

Necessary for a choice	12,981
Josiah Minot, had	10,286
Francis M. Weld	9,960
Thomas Chase,	9,520
Nathan Parker,	10,135
Phineas Adams, ..	9,556
Joseph Stephens Abbott,	9,960
Richard H. Messer,	9,924
Isaac Spalding	16,340
Frederick Smyth,	15,689
John H. Pearson,	15,926
James W. Johnson,	15,926
Edson Hill,	15,689
William R. Spalding,	15,900
William A. Tower,	15,825

Q. 6. Did you, when parties came to the bank to collect their dividends, request them to leave their proxies, or did Mr. Nathan Parker, late Treasurer, so request them?

(Objected to as incompetent.)

A. No, sir.

Q. 7. Did you write to any parties, at the request of Mr. Parker, before the last annual meeting, to solicit their proxies? If so, to whom did you write?

(Objected to as before.)

A. I wrote on slips of paper, saying we should be pleased to receive their proxy, if not represented. I do n't think Mr. Parker

requested me to do so. These slips of paper were not signed, but were inclosed in the letter inclosing the dividends. Mr. Parker's name was signed to the letters with the dividends. Such has been the common practice heretofore.

Q. 8. How many such letters, inclosing said requests, did you send to female stockholders or others, and how many proxies did you or Mr. Parker receive in answer thereto?

(Objected to as before.)

A. I can not say exactly. I should think a dozen or fifteen were sent. I can not tell how many proxies were received, perhaps ten.

Q. 9. State where the large portion of dividends were paid, and whether they pursued the same course, so far as you know, about procuring proxies?

(Objected to as before.)

A. At F. M. Weld's office, in Boston, one of the directors. I do not know their method of procuring proxies.

Q. 10. Did you or Mr. Parker procure the proxies of a Mr. Baldwin, of Manchester, of a Mr. Joy, of Manchester, and of a Mr. Richards, of Goffstown? State all you know about it.

(Objected to as before.)

A. We did not procure the proxy of Mr. Baldwin. I think I procured the proxy of Mr. Joy; not at Mr. Parker's request. I do n't know Mr. Richards; I do n't know who procured Mr. Baldwin's proxy.

Q. 11. Did you know of any one of the old Board of Directors soliciting proxies, or procuring any one to solicit proxies, or hear any one of them talk as to the same? if so, state which one, if not all, whom they procured to solicit proxies, or any one of them. State fully all you know about it.

(Objected to as before.)

A. I do n't think I ever heard any conversation between any of the directors to that effect.

Q. 12. Did you pay all the dividends that were paid at Mr. Parker's bank? if not, who did pay them, and did they present a proxy to each party whom they paid, and say, "here is a paper for you to sign," or to any of the parties whom they paid?

(Objected to as before.)

A. I paid most of them, but not all; Mr. Parker paid some and Mr. Charles C. Balch, the cashier, paid some. I do n't think they presented any paper as inquired of; possibly they did in some cases. I always paid them when I was in the bank.

Q. 13. Did you hear Mr. Parker, or any one of the late directors talk about the contract of April 29, 1870, between the Northern Railroad and the directors of the Concord Road before its execution? if so, did you hear either one of them say or inti-

mate or give any reason why they did not wait to have it ratified and approved by the stockholders? if so, state what?

(Objected to as before.)

A. I did not.

Q. 14. Did you, after its execution, hear Mr. Parker give reason why he consented to its execution, without waiting for its approval by the stockholders, at the meeting to be held a few days after?

(Objected to as before.)

A. I do n't think I did.

Q. 15. Did you hear Mr. Parker say or intimate that his purpose in consenting to its execution was to prevent the new board from coming into possession of the road, or any thing of the kind?

(Objected to as before.)

A. No, sir.

E. H. PAINE.

I, JOHN A. SPALDING, of Nashua, in the County of Hillsborough and State of New-Hampshire, depose and say as follows, in answer to the following interrogatories :

Interrogatories proposed by Hon. John Y. Mugridge, counsel for plaintiff.

Q. 1. What is your business, and how long have you been so employed?

A. I am Cashier of the First National Bank of Nashua. I have been so about seven years.

Q. 2. How are you related, if at all, to Isaac Spalding, Edward H. Spalding and William R. Spalding?

A. Isaac Spalding is my uncle, Edward H. and William R. Spalding are my brothers.

Q. 3. Have you any connection with the City Savings Bank of Nashua? if so, what? and who is the treasurer of said bank?

A. I am one of the trustees; Edward H. Spalding is Treasurer. I have been trustee about three or four years. I can't tell the exact time.

Q. 4. Did you, at the last annual meeting of the Concord Railroad, vote on any shares of said Concord Railroad stock? if so, how many?

A. I did; on ninety-two shares.

Q. 5. How long had said shares been standing in your name?

A. Two shares for a number of years; fifty shares, I think it was, since February or the first of March, 1870; forty shares since the last of April, 1870. I am not positive as to the dates, but it was near that time.

Q. 6. From whom and when was said stock transferred to you, and at what price; and will you annex copies of the certificates which you may have of the same?

A. Fifty shares from Mrs. A. E. Saunderson, of Hollis, in February or March, as I have stated before, at eighty dollars per share; forty shares from Jeremiah Ames, of Pepperill, Mass., in the last of April or first of May. This stock was transferred to me from Jeremiah Ames, as collateral security. This stock I afterward bought of him, understanding that I should be obliged to own it in order to vote. I sold him the same amount of shares about the first of June. I paid Mr. Ames eighty dollars per share.

I will annex copies of the certificates which I have of the same to this deposition; they are hereto annexed, marked A.

Q. 7. Did you pay for said fifty and forty shares of stock, mentioned in your last answer, at the rates per share as indicated by you?

A. I did.

Q. 8. And did you pay said Ames in full, for said forty shares purchased of him, at the price of eighty dollars per share?

A. I did.

Q. 9. Did you pay him in money for the same?

A. I paid him my individual check, on the First National Bank of Nashua, for thirty-two hundred dollars.

Q. 10. Did Mr. Jeremiah Ames, at or about the time you took the transfer of said stock, obtain a loan at your Bank?

A. He did.

Q. 11. What was the amount of it?

A. Five hundred dollars.

Q. 12. Did he give a note for the money?

A. He did.

Q. 13. Have you said note at your Bank at the present time, and will you annex a copy of it to this deposition?

A. Have the note and will annex a copy. It is here to annexed, marked "C."

Q. 14. Were there any sureties on that note?

A. There were not.

Q. 15. Did he give any collateral for it, and if so, what?

A. He gave forty shares of Concord Railroad Stock.

Q. 16. Were they the said forty shares of stock which you voted on at the last annual meeting, and claimed at that time to own?

A. They were.

Q. 17. Was not in part the transfer of that stock to you made for the purpose of security for said five hundred dollar note to the bank?

A. It was.

Q. 18. Did the books of the bank show or indicate that said stock was so pledged as collateral security?

A. They showed that there was collateral security lodged for the note.

Q. 19. Did they show what the collateral was?

A. I think it was not stated on the book.

Q. 20. Will you please state at which bank this money was obtained by Mr. Ames, whether the Savings Bank or the Bank of Discount?

A. The Bank of Discount.

Q. 21. Was the check for thirty-two hundred dollars given by you, as you have said, for payment for the forty shares of stock at eighty dollars a share, ever presented by Mr. Ames for payment at the bank?

A. It was not.

Q. 22. Was it the understanding between him and you that it should n't be?

A. We had no particular understanding in regard to it.

Q. 23. Will you state positively that there was no such understanding as that?

A. We had no understanding, no words about it, at the time, in particular.

Q. 24. How long did said check lay in his hands, and had

you thirty-two hundred dollars on deposit in the bank at the time it was drawn ?

A. The check laid in his hands until, I think it was, the first week in June ; I can not state my balance at that time. I had an account ; I told my brother, E. H. Spalding, I had bought Ames' stock for the purpose above stated and given my check, and should the check be presented he must assist me to the money. I did not expect him (Ames) to present it immediately.

Q. 25. Why did n't you expect him to present it immediately ?

A. He could not get to Nashua quicker than I ; he lived in Pepperill. I told him I would sell him the stock again in June, at same price, if he wanted it.

Q. 26. Did you let him have the same stock again, in June, at the same price, and did he let you have at that time the identical check that you let him have when you took the stock in May ?

A. I sold him, the last of May or the first of June, forty shares at the same price which I paid him, and received the same check in payment.

Q. 27. How many days, as nearly as you can state, did you keep said certificate of stock in your hands ?

A. Three or four days.

Q. 28. Did this transaction of the transfers between you and him appear at all upon the books of the Concord Railroad Corporation ?

A. It did not.

Q. 29. Was not said transfer made to you in order that you might vote on said stock ?

A. The purchase was made in order that I might.

Q. 30. Was not that the sole reason of the transaction, so far as you and Mr. Ames were concerned ?

A. It was.

Q. 31. At the time you took the transfer of said shares, did you not intend to re-transfer as soon as the annual meeting was ?

A. At the time I purchased said stock I did intend to replace it. I told Mr. Ames he could do as he liked about taking the stock over again ; I would buy his stock. I mean by replace it, I would sell him so much stock.

Q. 32. Which way did the stock that you owned vote, including said forty shares at the annual meeting ? for the Old Board or for the New Board.

A. For the New Board ?

Q. 33. Before you voted at said annual meeting, were you required to make, and did you make oath before a Justice of the Peace, that you were the absolute and *bona fide* owner of said stock ?

A. I did not.

Q. 34. Are you positive of that ?

A. I am.

Q. 35. Did you vote on said stock as though you were the absolute and *bona fide* owner thereof?

A. I did.

Q. 36. Is said stock now held by said bank, and has it been ever since it left your hands, as collateral security for said five hundred dollar loan.

A. It has.

Q. 37. Did you at the time of said last annual meeting, and at or about the time the same was opened, place in the hands of your brother, Edward H. Spalding, a certificate for three hundred shares of Concord Railroad stock, made out in the name of Isaac Spalding, and request him to sell the same to "Sir Isaac," meaning Isaac Spalding of Nashua?

A. I did.

Q. 38. Where did you get said certificate of three hundred shares?

A. Of William A. Tower, of Boston.

Q. 39. How long had you had it in your hands before you handed it to Edward H. Spalding, as aforesaid?

A. As near as I can recollect it was about two weeks.

Q. 40. Was said certificate filled out in the name of Isaac Spalding at the time it was put into your hands?

A. I think that William A. Tower sent me three certificates, of one hundred shares each, by Mr. James W. Johnson, to be transferred to Isaac Spalding, and that I gave James W. Johnson a receipt for that amount of stock, stating that I had received that amount of stock.

Q. 41. What did you do with said three certificates of stock?

A. These were sent to the Treasurer for transfer to Isaac Spalding.

Q. 42. State the contents of the receipt which you gave to J. W. Johnson for the three hundred shares of stock which he delivered to you as aforesaid?

A. Received of J. W. Johnson certificates of three hundred shares of Concord Railroad stock, in the name of W. A. Tower, to be transferred to Isaac Spalding. That is as near as I can recollect it; that is substantially all there was to it.

Q. 43. What was the understanding between you and Johnson, if any, as to when that receipt should be surrendered to you?

A. We had no understanding about it.

Q. 44. Had Isaac Spalding requested you to buy him three hundred shares of stock before that time?

A. He had not requested me.

Q. 45. Did you have said certificate for three hundred shares made out in his name without his knowledge or request?

A. I did not; all my conversation in regard to it was with my brother, Edward H. Spalding.

Q. 46. Did you not understand that said three hundred shares

of stock was transferred to Isaac Spalding in order that he might vote thereon at the next annual meeting?

A. I understood that Mr. Tower had more stock than he wished to vote, and I recommended to him to put three hundred share in Isaac Spalding's name, where we considered it would be safe.

Q. 47. Was this done in order that he might vote thereon?

A. Mr. Tower wished that he might vote upon it. The stock was sold to Isaac Spalding, and he gave his check.

Q. 48. Will you answer the question, was this done that he might vote thereon?

A. He bought it that he might vote upon it.

Q. 49. What was said stock put in at, to Isaac Spalding—said three hundred shares?

A. At par.

Q. 50. Did you understand that Mr. Tower made an absolute and *bona fide* sale of three hundred shares of stock to your uncle at fifty dollars per share?

A. I knew nothing of the price until he told me he wished to give me his check to pay for the stock, and he gave me a check on the Suffolk Bank for the amount—fifteen thousand dollars.

Q. 51. Did you understand that Mr. Tower made an absolute and *bona fide* sale of three hundred shares of stock to your Uncle at fifty dollars per share?

A. I understood that my brother made the sale to him—a *bona fide* sale; Mr. Tower made no sale to him. The stock came from Mr. Tower. What I mean to say is that Mr. Tower had no talk with Mr. Isaac Spalding about it that day.

Q. 52. Will you swear, that on the part of yourself and brother, you made and intended to make to Isaac Spalding a *bona fide*, absolute, unconditional sale of those three hundred shares of stock for fifty dollars a share?

A. My brother did sell him the shares, the three hundred shares, and gave him a certificate made out in his name for fifteen thousand dollars.

Q. 53. Was said sale, so far as you were connected with it, an honest, absolute, unconditional, unreserved, *bona fide* sale; and did you intend it to be such, so far as you were connected with it, and did your brother Edward H. intend it as such, so far as you know?

A. I considered it a genuine sale. So far as I was concerned personally I depended upon his, Isaac Spalding's honor to sell it back, should he, my brother, E. H. Spalding, ask for it.

Q. 54. Did you expect your brother would ever ask to have it sold back, at the time he transferred it as aforesaid?

A. I did, at the time he sold it as aforesaid.

Q. 55. Did said check for fifteen thousand dollars remain in your hands until the certificates of the said three hundred shares of

stock were surrendered up or transferred back again by your uncle, Isaac Spalding?

A. It did, until it was surrendered up by my uncle to me.

Q. 56. When you received back said three hundred shares from your uncle, did you return them to Mr. Johnson or Mr. Tower, and take up the receipt which you had previously given Johnson therefor?

A. I returned the certificates to Mr. Tower, and I did not take up the receipt, as I did n't consider it of any account.

Q. 57. Do you know of any other sales, as you call them, of railroad stock made shortly before the last annual meeting, similar to the one that was made your uncle, Isaac Spalding?

A. I know of one other sale.

Q. 58. Who was it from and who to?

A. From William A. Tower to First National Bank, Nashua.

Q. 59. How much stock passed in the transaction?

A. Two hundred shares.

Q. 60. What was the price attached to the same, in the transfer?

A. Seventy-five dollars.

Q. 61. You may explain the transaction between William A. Tower and the First National Bank?

A. William A. Tower wished to borrow fifteen thousand dollars the first of May, 1870, on collateral. The First National Bank agreed to loan him that amount, on call; taking the stock at price mentioned above. The day before the meeting I saw Mr. Tower, and he said there would be some question in regard to his voting the stock, and that he must own it. He requested me to bring the certificates to Concord, and he gave me Tower, Giddings & Torrey's check for the amount (fifteen thousand dollars.) The next day the Bank intended to have bought bonds. I told Mr. Tower, if he would keep the money, so that we could have it on call at six per cent, I should rather take the certificates again and not change the loan for the present—which I did—that is the whole transaction.

Q. 62. What did you do with the certificates of said two hundred shares of stock when you brought them to Concord as aforesaid?

A. I gave them to Mr. Tower.

Q. 63. Do you know what he did with them?

A. I do not.

Q. 64. Were they given up to him in order that he might vote upon them?

A. He took up his loan, *bona fide*, in order that he might vote on the stock.

Q. 65. Has he taken up the check of Tower, Giddings & Torrey, with which he paid said loan?

A. He has.

Q. 66. Did he redeem said check in money, if not, how?

A. He redeemed it at their office with collateral—the same collateral that he took it up with.

Q. 67. How soon after the annual meeting was it done.

A. Immediately after; the next day or the next but one.

Q. 68. Was a new note put into the bank or the old one?

A. There was no note put in; we loaned on the collateral.

Q. 69. Was the original transaction a loan upon collateral?

A. It was a call loan, upon collateral.

Q. 70. When said loan was made were said two hundred shares of stock regularly transferred, as collateral to the bank, a record of said transfer being made upon the records of the books of the corporation? or were the certificates representing said two hundred shares merely indorsed in blank, and left at the bank.

A. They were indorsed in blank by William A. Tower; there was no transfer made upon the books of the corporation.

Q. 71. Did the bank make or execute any transfer of any kind back to Tower, at the time the certificates were put into his hands to be voted on as aforesaid?

A. They did not; there was nothing to make.

Q. 72. Was it suggested to you at any time before the annual meeting of the Concord Road, or did you understand that in any contingency, if so, what, you were to go into the Board of Directors.

A. Some of my friends had suggested to me that in case of a vacancy I might be chosen to fill it; but I never have had any particular understanding with them on the matter personally.

Q. 73. Please give the names of the friends referred to in your last answer?

A. Mr. Edson Hill, J. W. Johnson, Wm. R. Spalding, Frederick Smyth. I don't remember any conversation with any others; little with them.

Q. 74. Was this suggestion made, and conversation had, before the annual meeting?

A. It might have been mentioned before by some of them.

Q. 75. Who of them, if any, mentioned it before?

A. I am unable to state; possibly all of them; I am not certain.

Q. 76. Was it not understood before and at the time of your uncle Isaac's election, that he was to retain the office but a short time, and then resign, and you to be put in the board in his place?

A. It might have been so understood by them, as the other members of the board; I had no conversation with Isaac Spalding myself with regard to the matter.

Q. 77. Did you not hear that matter talked up among the friends named in your previous answer?

A. I merely heard the matter casually spoken of a very few times.

Q. 78. Did you hear it suggested or talked up as to who would be elected President of the Board in case your uncle should resign?

A. I did.

Q. 79. Who was it.

A. Frederick Smyth?

Q. 80. Did you hear that matter talked up frequently? if so, how frequently?

A. Never remember of hearing it but once, excepting in personal interviews with them.

Q. 81. When was the time referred to, and who was present at the time talking it up?

A. At Manchester, at Governor Smyth's office; Governor Smyth, Moody Currier, James W. Johnson, J. H. Pearson, William R. Spalding, Anson S. Marshall. I have the impression there were one or two others in, but I can't state their names.

Q. 82. Was this near the time the Board of Directors was being agreed upon?

A. It was.

Q. 83. Do you remember whether any paper was signed at that time by any of the persons present?

A. There was a paper drawn up and was signed by the persons present; but I have the impression it was not signed on that evening by all of them.

Q. 84. What was done with said paper after it was signed?

A. I do not know.

Q. 85. Do you know where said paper is now? have you seen it or heard any person say where it was since you saw it then?

A. I did n't see it there; I saw it the next morning and signed it, since which time I have never seen it, and do not know where it is now. I have heard no person say where it was.

Q. 86. Was it understood who should be the keeper of that paper at or about the time it was being signed?

A. It was not by me.

Q. 87. Did you hear that matter suggested by any body?

A. I did not.

Q. 88. For what purpose, as you understood it, was the name of Isaac Spalding put on the ticket?

A. I understood that he would have some pride in being re-elected President of the Concord Road.

Q. 89. Was there not an understanding between you, William R., Edward H., and the other associates, as they have sometimes been called, and Isaac Spalding, that if his name could be put on the ticket he would vote for the new board, and otherwise not; and that his stock could be secured to the new board by that arrangement? did you ever hear this matter talked?

(Objected to as leading, involved and multifarious.)

A. I never heard this matter talked or suggested.

Q. 90. Did you procure any proxies for any body to vote on, at the last annual meeting?

A. I did, a very few.

Q. 91. Whose did you procure for that purpose?

A. Mrs. Martha W. Coggin I can't state positively the number of shares. Mehitable Lund, I think it was, six shares; I think Martha W. Coggin's was seven shares. There were very few others, I don't remember the names. Hannah F. Gilman, I think had eight shares. Julia Gilman has but one or two shares. That is all I can remember now.

Q. 92. Were the votes by these proxies cast in favor of the new board at the annual meeting?

A. They were.

Q. 93. Who voted on said proxies.

A. I could not tell.

Q. 94. Did you procure these proxies in this way for some other person to vote on at said meeting?

A. I did. I gave them to my brother.

Q. 95. Did you expect to vote on them yourself at the time you solicited or procured them?

A. I did not know who would vote upon them; but in every instance represented that they would be used in favor of the new board.

Q. 96. Do you know of any other persons who solicited proxies in behalf of the new board, for other individuals to vote on?

A. I knew of my brother having proxies. I do not know that he solicited them.

On cross-examination by Hon. Charles R. Morrison, deponent says as follows, in answer to the following interrogatories:

Q. 97. Have you any personal knowledge what persons solicited proxies for the old board?

A. Persons told me that H. F. Courser; had asked them for their proxies, another lady told me that Nathan Parker had solicited her proxy, There is no other that came under my personal knowledge.

(Answer objected to as hearsay.)

Q. 98. What connection or office had Nathan Parker under the former administration of the Concord Railroad? and state whether he was a candidate at the annual meeting?

A. He was treasurer. He was also a candidate at the annual meeting.

Q. 99. Please give the name of the lady who informed you, that he solicited her proxy?

A. I cannot give the name; it was a lady to whom I paid a dividend.

Q. 100. Do you know where she resides, or what person can give her name?

A. I do not.

R. 101. Please give the name of the lady who told you that Mr. Courser solicited her proxy? (Objected to as incompetent testimony.)

A. Melinda Underwood; she resides at Nashua, N. H.

Q. 102. At what place and in what manner did you obtain the proxies you have mentioned?

A. I called at their places of residence; I told them, if they wished their stock represented in the interests of the new board, I should like them, otherwise I did n't expect them.

Q. 103. When Mr. Tower called at the bank, as you have before stated, did you understand him that he wished to make an actual payment of the debt upon which the two hundred shares were holden? and did he make an actual payment of such debt?

A. When I saw Mr. Tower, in Boston, he said he must take up his collateral in order to vote it, and did so on the morning of the meeting. I did understand that he wished to make an actual payment of the debt; he did n't call at the bank. He made an actual payment of such debt.

Q. 104. You have said that there was afterward a delivery of two hundred shares by him to the bank; did you understand it was upon a new loan?

A. It was virtually a new loan, but it would n't appear so on the books of the bank.

Q. 105. At whose suggestion was this new loan made?

A. There was no particular suggestion in regard to it from any body. The loan was not charged off, but remained the same on the books.

Q. 106. You have stated that you said to him that if he was willing it should remain on call at six per cent, you should prefer it, or to that effect. Did you consider that it would be for the interest of the bank that it should so remain?

A. I did.

Q. 107. When you made the purchase of Mr. Ames did you understand that you could not vote upon the stock properly, unless there should be an actual and *bona fide* purchase, and did you intend to make such purchase?

(Objected to, it not being within the province of the witness to characterize the transaction.)

A. I did.

Q. 108. Did you understand that he was at full liberty to present the check and require payment whenever he pleased?

(Objected to as leading, the witness being one of the defendants really under the amendments filed in this case.)

A. I did.

Q. 109. Did you understand that you were under any other than an honorary obligation to sell back the stock to him, or the same amount, in case he should afterward wish to purchase it?

(Objected to as leading, the witness being practically a party under the amendment to the bill, and as otherwise incompetent.)

A. I did not.

Q. 110. Did you understand that Mr. Isaac Spalding could not vote upon the three hundred shares unless there should be an actual and *bona fide* sale to him, and did you intend to make such a sale?

(Objected to as before, Mr. Spalding being a party to the bill, and this witness being practically a party to the bill under the amendments, and the matter of putting leading questions to witnesses being regulated by the discretion of the Court.)

A. I did.

Q. 111. Whom did you understand to be the owner of the shares down to the time of the sale to Isaac Spalding?

A. William A. Tower.

Q. 112. Was he (Tower) present at the meeting?

A. He was.

Q. 113. Please state whether or not you purchased other stock than that of Mr. Ames at any time before the annual meeting, which you would not have purchased if you had not intended and wished to vote upon it at the annual meeting?

A. I purchased a few odd shares for my brother; I did not purchase any on my own account.

Q. 114. Should you have purchased all the stock you did purchase prior to the annual meeting (other than the Ames stock) if you had not wished to effect a change in the Board of Directors?

A. I should not.

Q. 115. Did you suppose that the fact that your motive in purchasing the stock and becoming the owner was that you might vote upon it, in any way prevented your becoming the absolute and *bona fide* owner of it?

A. I did not.

Q. 116. Will you please see if your answer to Interrogatory 17 is correct?

A. It is.

Q. 117. Did you understand that you held that stock as security when you became the absolute purchaser, or to what time do you refer?

A. When that stock was taken up as collateral it remained for me to put suitable collateral in its place. I became personally responsible therefor.

Direct resumed.

Q. 118. Do the books of the bank show that that stock was removed from the bank at all as collateral?

A. They do not.

Q. 119. Where did you get this money to pay for the fifty shares of stock you bought as aforesaid?

A. I sold some bonds, and borrowed of my brother Edward H. Spalding, he having sold real estate; got more from Savings Bank.

J. A. SPALDING.

Par value \$50 a share, Concord R. R.

A.
[Copy of Certificate.]

No. 12,615.

46 Shares.

CONCORD RAILROAD CORPORATION.

BE IT KNOWN, That John A. Spalding is proprietor of forty-six shares in the Capital Stock of the Concord Railroad Corporation, subject to the provisions of the Charter and By-Laws of the Corporation, the same being transferable by an assignment thereof in the books of said Corporation, or by conveyance in writing, recorded in said books, and when a transfer shall be made or recorded in said books of the Corporation, and this certificate surrendered, a new certificate or certificates, will be issued. Dated at Manchester, New-Hampshire, this 23d day of May, 1870.

J. MINOT, President.



NATHAN PARKER, Treasurer.

B.

NASHUA, Aug. 27, 1870.

LUTHER S. MORRILL, Esq.

DEAR SIR,—I inclose copy of Certif. Note, &c. In my evidence I think I gave in the am't of Ames' stock as 40 shares. I find it to be 46 shares. If given as 40 shares it was an error in my memory.

Very respectfully,
J. A. SPALDING.

C.

[Copy of Note.]

\$500.

NASHUA, May 13, 1870.

Six months after date I promise to pay to the First Nat. Bk., Nashua, N. H., five hundred dollars, value received, 46 shares Concord Railroad stock as collateral.

JEREMIAH AMES.

I, ANSON S. MARSHALL, of Concord, in the county of Merrimack and State of New-Hampshire, testify and say as follows, in answer to the following interrogatories:

(Interrogatories proposed by Hon. John Y. Mugridge, as counsel for plaintiff.)

Q. 1. Were you one of the persons associated together before the last annual election of Directors of the Concord Railroad, to purchase stock for the purpose of controlling the election of Directors at said meeting?

A. I purchased some stock before the last annual meeting, and I had fifty shares of stock which I purchased, I think, four years ago. One of the purposes which I had in purchasing stock, among others, was to make a change in the officers of the road; at the time I purchased last spring I understood that there were other parties purchasing stock, and I supposed that they were purchasing it with a view, among other things, to make a change in the officers of the road.

Q. 2. Who were those other parties that you refer to in your last answer?

A. I heard, Edward H. Spalding, of Nashua; John A. Spalding, William R. Spalding, of Lawrence; Joseph B. Clark, of Manchester, and Mr. Kidder, I think, from Manchester; Mr. Riddle from Manchester; Mr. Williams, Edson Hill, Moody Currier, Frederick Smyth, and others, all of Manchester; John H. Pearson, of Concord, and some others, that do n't occur to me now.

Q. 3. Who first suggested to you last spring the idea of purchasing stock for the purposes aforesaid?

A. If you mean by the purposes aforesaid, for the purpose of controlling the election of Directors at the annual meeting, I have no recollection of any particular individual who first made any suggestion to me. I remember that one of the Mr. Spaldings suggested to me, in the winter or early spring [after asking me how much I then owned, and I told him fifty shares, that I had better buy more; I told him that I intended to buy more of the stock, and had calculated to for some time. He suggested to me, among other things, as I now recollect it, that it was a good investment at the then going price, I think then about \$75, and higher. We had considerable talk. I think he also suggested that the road might be better managed for the interests of people who did local business upon it, and that the rates of local freight and passenger rates might be reduced, and still pay ten per cent to the stockholders. Other parties talked to me about the same time, about purchasing stock. I think John H. Pearson said to me that he was going to buy some of the stock; that he was going out of business, and that he knew of no better place to make an investment of his surplus funds; that it was a safe investment and a good investment at \$80 per

share, I think. I think he said that he should buy 500 shares, at least; but of that I am not certain. I do not remember that he said any thing about its being his purpose, at that time, to change the Board of Directors].

(Parts of answer in brackets objected to by counsel for plaintiff, as irresponsible to question, and as uncalled for and voluntary statements of incompetent statements thrust into the case by the witness.)

Q. 4. How much stock did you purchase last spring, in addition to the fifty shares then owned by you?

A. I think I purchased for myself about 216 shares, or thereabout.

Q. 5. Did you purchase any stock last spring for other parties than yourself? if so, how much, and for what parties?

A. I think I bought fifty shares that I did n't retain for myself; but I am not certain now who had it.

Q. 6. Of whom did you have the 216 shares retained by yourself? and did J. W. Johnson furnish you with any of it?

A. I think I bought 31 shares of Enoch Gerrish, of this place; 50 shares of Thomas Stewart, and I think Mr. Johnson furnished me with 90 shares, or thereabout; and I think some other small lots that do n't occur to me.

Q. 7. Will you state where you got the 45 shares not accounted for in your last answer?

A. It do n't recur to me now, but may before I get through with this deposition.

Q. 8. Can you state now where you got one share of said 45 shares, and do you mean to state that you are not able, at the present time, to state where you got said 45 shares?

A. It has occurred to me that I bought 75 shares more, which would account for the 45 shares and 30 more; I am not, as I stated before, certain as to the exact amount that I had of Mr. Johnson; I remember distinctly that I voted, I think, on 266 shares; I remember, also, of selling one small lot of 10 shares, I think, about the time of the annual meeting. The other 20 shares, if I had it, I can not account for now, and tell what became of the same.

Q. 9. Of whom did you buy said 75 shares?

A. I bought it of Frederick Smyth, I think.

Q. 10. What, in the aggregate, as nearly as you can state, did the full amount of stock you purchased last spring cost you?

A. For some of it, I paid \$82 or \$82½ per share, and from that to \$85 per share. The amount that I retained, I think, cost about \$17,000 or \$18,000.

Q. 11. How much did all the stock you purchased cost you in the aggregate, as nearly as you can state?

A. I am unable to state at this time how much I bought, any nearer than I have. I think I did not, and feel confident

that I did not pay higher than \$75 per share for any that I purchased.

Q. 12. Will you please answer the former question, and state how much all the stock you purchased, in the aggregate, not per share, cost you, as nearly as you can state?

A. I have heretofore stated how much stock I purchased last spring, the persons of whom I bought it, as nearly as I am able, and can state approximately, but not precisely, what the stock cost me, which I retained, and I think what I retained cost me not far from \$18,000; what I purchased and sold I am unable to state what it cost me, as I am not able to state the amount which I sold.

Q. 13. Where did you get the money to buy your stock with?

A. Some I had on hand, some I had paid me where it was owing me; in part payment for the stock which I purchased from Thomas Stewart, I gave him my note, and a portion of it I borrowed from John L. Tallant, in this wise: Mr. Tallant made a note for \$12,000, I think; I signed it with him, and it was discounted either at the First National Bank of Concord, or the National Savings Bank, and I had the money; I am not certain that all the \$12,000 went into Concord Railroad stock, and I now think it did not; that I purchased at or about that time some Chicago & North Western Railroad stock; I also bought, somewhere about that time, some other stocks, and I can not tell what particular money I used to pay for Concord stock or other stocks, as I used it as was convenient for the transaction of my business.

Q. 14. How much other money did you hire to make said purchases of Concord Railroad stock beside the \$12,000 had of Tallant, obtained and used in the manner you have stated, and for how much of said stock did you give your note?

A. I gave my note to Mr. Stewart, I think, for about \$3000. I signed a note with Frederick Smyth, and John H. Pearson, and J. W. Johnson which was discounted at the National Savings Bank, Concord, for \$25,500 I think, and am liable to pay the whole note, but my proportion of it is one fourth part, which I paid for the 75 shares of the stock which I had from Mr. Smyth. When this money was first obtained at the National Savings Bank, as I understood it, it was for Mr. Smyth, and he lodged 300 shares of Concord Railroad stock as collateral therefor. Subsequently, I agreed to take 75 shares of that 300, and the same was transferred to me, and I transferred it in blank and left it as collateral for said note. It does not occur to me now that I hired any other money last Spring, any portion of which was used for the purchase of Concord Railroad stock.

Q. 15. Have you paid any part of the principal or interest of the \$3,000 note to Thomas Stewart?

A. I think not.

Q. 16. Was the \$12,000 note, signed by you and Tallant, discounted at the National Savings Bank, or First National Bank of Concord?

A. I think it was at the National Savings Bank, but am not certain.

Q. 17. Has any part of the principal of said note been paid?

A. I think about \$8,000 has been paid.

Q. 18. By whom was it paid?

A. Mr. Tallant informed me that he had paid about that much on the note.

Q. 19. Did said Savings Bank have any collateral for said note at the time it was given? if so, what was it?

A. Not to my knowledge.

Q. 20. Who applied to said bank for the money on that note? you or Mr. Tallant?

A. I am not certain which, but my impression is that Mr. Tallant asked them to discount it.

Q. 21. Give the date of said note as nearly as you can?

A. I think it was in March, but I am unable to state what time in March; but I can ascertain exactly if it is desired.

Q. 22. Are you now, and were you and John L. Tallant, at the time of said loan, Trustees of said National Savings Bank in Concord?

A. I am one of the Trustees of said National Savings Bank, and was at the time said loan was made; but I did not understand that Mr. Tallant then was, or now is, one of the Trustees of said bank.

Q. 23. Did you, on the 8th day of February, 1870, procure another loan at said National Savings Bank, at said Concord, of \$3,000, upon a note signed by yourself, with Hartford & Erie bonds for security? if so, was there any other signature but your own to said note? What amount of said bonds did you deposit as collateral, or has said note or any part of it been paid?

(Objected to because the witness has already stated all the loans that he says had any connection with the purchase of Concord Railroad stock, and the one mentioned in the question, therefore, relating to other matters, has no relevancy to this suit, and is incompetent.)

A. I procured a loan of \$3,000 about that time, I think, and gave my individual note therefor, and lodged as collateral security, Boston, Hartford & Erie Railroad bonds, known as the Burdell mortgage bonds, ten in number, each being for the amount of \$1000; I have paid no portion of the principal of said note, but think I have paid the interest thereon.

Q. 24. What was the value of said Hartford & Erie bonds in the market at Broker's Board, at the time of said loan, and what is their present value at Broker's Board?

(Objected to as irrelevant to this suit, and incompetent.)

A. I think, at the time of the loan, they were worth from \$44 to \$46 per \$100, of the face of the bond, and that they are now worth about \$27 per \$100, of the face of the bond.

Q. 25. What part, if any, of the money procured on said loan was used by you for the purchase of Concord Railroad stock?

A. I think no part of it was; but as I have said before, I used what money I had for such purposes, as I had occasion to do.

(Adjourned from 12.45 P. M. to 2 P. M.)

Upon reflection I am very confident that no part of said loan was used to purchase Concord stock.

Q. 26. Have you stated, in the presence of the magistrate, within ten minutes, that it is within the limits of human possibility that \$1 of the loan of \$3000 may have gone into the purchase of Concord Railroad stock?

A. I have stated in the presence of the magistrate, I think, within ten minutes, that it was within the limits of human possibility that \$1 of said loan might have gone into the purchase of Concord Railroad stock, or substantially that; but I do not think that it is within the range of probabilities that any portion of it went into the purchase of such stock.

Q. 27. State all the liabilities, of every kind or description, that you incurred before the annual meeting in May last, to Savings Banks in this State, for money which was used in the purchase of Concord Railroad Stock.

A. I think now of no other liabilities that were incurred by me, directly or indirectly, to Savings Banks, for the purpose of obtaining money to purchase Concord Railroad stock, other than I have stated heretofore in this deposition.

Q. 28. Did you incur any liabilities on that account, to any other parties than Savings Banks, at any time antecedent to the annual meeting?

(Objected to as immaterial, and otherwise incompetent.)

A. I think of none now.

Q. 29. Will you swear that you did not incur any liability for that purpose, to any party, before that meeting?

A. I am unable to answer the question in any other way than I have already.

Q. 30. Did you sign any note upon which George Clough's name was, to any party, before or since said meeting?

(Objected to.)

A. I have no recollections of so doing, and think not.

Q. 31. State all the liabilities, of every kind or description, that you are under to-day, directly or indirectly, on account of money raised to purchase Concord Railroad stock, other than those you have before stated in this deposition?

A. I think of no obligations, other than I have stated, that I incurred for money to purchase Concord Railroad stock prior to the annual meeting thereof.

Q. 32. Have you incurred any such liability since? if so, state it.

(Objected to.)

A. I have purchased some stock since the Concord Railroad meeting, for which I incurred a liability.

Q. 33. How much stock did you buy, of whom did you buy it, and what was the liability you incurred by its purchase?

(Objected to.)

A. I bought 240 shares, I think. I bought it of Messrs. Tower, Giddings & Torrey, and incurred a liability therefor of about \$20,000.

Q. 34. Where did you get the money to pay the \$20,000 for said stock, and were said Tower, Giddings & Torrey the owners of said stock at the time you purchased it?

(Objected to.)

A. They were the owners of said stock, as I understood it, and I borrowed the money in connection with others, at Manchester, of the Amoskeag Savings Bank, and the Merrimack River Savings Bank.

Q. 35. When did you borrow said money, how much did you have of each savings bank, who signed the notes with you therefor, and what collateral did you make over to the banks?

(Objected to.)

A. I am unable to give the date; but I think it was the last of July. I had half (\$10,000), I think, of each savings bank. Edward H. Spalding, John H. Pearson, William R. Spalding, John A. Spalding, Edson Hill, Tower, Giddings & Torrey and Moody Currier, signed the note to the Merrimack River Savings Bank, and I think one other, whose name does not occur to me at this moment, signed that note; and the persons named heretofore in this answer, except Moody Currier, signed the note to the Amoskeag Savings Bank, and Frederick Smyth signed it, and one other party, whose name I do not now recall.

(Adjourned at 3 P. M., Saturday, Aug. 19, to Monday, Aug. 21, at 10 A. M.—Resumed Aug. 25, 4 P. M.)

In answering the other day Interrogatory 34, when I was making this deposition, I was then unable to recollect the other party who signed the note to the Merrimack River Savings Bank, and also to the Amoskeag Savings Bank; but I now

can state who it was. It was James W. Johnson. I lodged as collateral security 240 shares of Concord Railroad stock. Each of said notes to said banks was for \$100,000, and each of the signers thereto, as I understand, pledged 240 shares of stock, and was each liable, as I now recollect the form of the note, for the whole of the note, and each was actually indebted for one tenth part of each note, on his own account. I bought my stock, as I understood it, of Messrs. Tower, Giddings & Torrey, through Mr. Tower.

Q. 36. Was not said stock transferred to you July 15th ? and what was the price paid by you to Tower, Giddings & Torrey therefor ?

A. I am unable to state the date ; that may be correct, however. I think the price named to me was \$83, or thereabout, per share.

Q. 37. Have you purchased any other stock since said annual meeting, than that before alluded to in this deposition ?

A. Not any that I recall.

Q. 38. Do you know of any bond or agreement in writing, being made, before said annual meeting, and signed by either of said persons heretofore alluded to, as having signed said notes with you, in substance guaranteeing each other against losses on account of the purchase of Concord Railroad stock ; or providing in substance for an equalization, upon some terms, of the amount of stock held by them, or either of them, or that in substance ?

A. I know of no bond or agreement signed before said annual meeting, by either one of the present Board of Directors, or either one of the parties who signed either one of the notes, guaranteeing each other against loss on Concord Railroad stock, or any thing of the kind ; the only paper, or obligation, or agreement, that I know of being signed by any one of said persons, having any reference to Concord Railroad stock, or the purchase thereof (and I am not certain that had reference to the purchase of stock), was the memoranda of agreement which was signed on or about the 29th day of March, 1870 ; and, as I now recollect the contents of it, there was nothing in it about guaranteeing any body against loss which they might sustain by reason of having purchased Concord Railroad stock.

Q. 39. Who signed said memoranda or agreement, dated on or about March 29, 1870.

A. I signed it, and I think Moody Currier, Frederick Smyth, John H. Pearson, Wm. A. Spalding, James W. Johnson, Edson Hill, and I am not certain as to any others—there may have been others. I do n't recollect of seeing all the parties

heretofore named in this answer sign it, but I think they did sign it.

Q. 40. Did not George Clough sign it?

A. I did not see him sign it, as I now recollect, but suppose he did.

Q. 41. Who wrote said agreement?

A. I think I wrote it.

Q. 42. Where?

A. In the back or front office of the First National Bank at Manchester.

Q. 43. What was done with it after it was written and signed?

A. I really don't know; the last I saw of it was there at that place and at that time.

Q. 44. In whose hands, or whereabouts was it, the last time you saw it?

A. I think the last time I saw it (I have no recollection of having seen it since) it was lying upon a table in the bank.

Q. 45. Do you know where it is, or where it has been at any time since it was signed?

A. I do not; as I said before, I have no recollection of having seen it since that time.

Q. 46. Have you heard any body say or state where it was, since you saw it as aforesaid?

A. I think not.

Q. 47. Are you positive that you have not?

A. No; I am not; I feel very confident, though, that I have not.

Q. 48. Was said paper called for in connection with hearings before the Legislature in June last?

A. It was. I was asked for it, and I said then, as I say now, that I had no knoweledge then where it was, and have no knowledge now where it is.

Q. 49. Have you made inquiry of either of the defendants in this case, or of any body else, to ascertain where it is or where it has been since June last?

A. I have not made any inquiries that I recall, since June last, but at that time I asked several of the defendants, if not all, if they knew where it was or what had become of it, and I was unable to find it, or ascertain what had become of it.

Q. 50. At the time it was drawn, was it not regarded as a material and important paper to those parties who signed it?

A. I did not regard it important as a legal document, but did understand it to be a written pledge or promise of the parties, each to the other, to perform and carry out substantially the memoranda of the things therein contained. I think I then stated to them, it was not susceptible of being enforced as a matter of law.

Q. 51. Was it intended to be kept? and did you hear any thing said as to who should be the keeper of it?

A. I supposed it was to be kept, but I have no recollection of hearing any thing said as to who was to keep it.

Q. 52. You say you wrote it; please state fully its contents, and the different subjects of agreement contained therein?

A. The memoranda of agreement was written under these circumstances: most of the persons that I have named, to wit, Edson Hill, Moody Currier, John H. Pearson, William R. Spalding, James W. Johnson, Frederick Smyth, and I think one or two others, were present portions of the time while it was being written. Before, however, it was written or commenced, we had been considering the proposition which Mr. Johnson and Mr. Spalding brought from Mr. Stearns, as they said, which was, as I now recollect it, a transcript of paper "No. 5," so called, annexed to Governor Stearns' deposition, and there was much talk in the two rooms amongst the different individuals as to whether the proposition should be accepted, and after it was decided not to accept it, some one proposed that no propositions should be considered from any one to purchase the stock which the several parties owned, unless a large majority of the persons who were, or had been, there that evening consented to it, and that there should be a memorandum drawn up and signed to that effect, and asked me to write it—and I did write, with several making suggestions as to the same. My recollection is that it began substantially as follows:

Memoranda of agreement entered into this day (giving the date, which I think was about the twenty-ninth of March) by and between the subscribers hereto, and I have the impression that the first provision was,

1. We will buy sufficient stock of the Concord Railroad to elect a new Board of Directors, in order to obtain the control of said road for the public good.

The next provision, as I recollect it now, was substantially:

That no proposition should be received from any person or persons, and entertained, to purchase the stock owned by the subscribers, and for the sale thereof at any price without the consent of seven of the subscribers thereto.

I think there was a provision in there, but the precise order of it I can't state as to,

Whom they would support for a portion of the Directors, and for Clerk and Treasurer.

I also think there was a provision in it, as to the conductor suits (substantially) that if they obtained the control of the road they would have the same settled and adjusted in the manner which should be for the best interests of the road. I remember that there was a good deal of talk, when that proposition was under consideration, as to the amount of money

that had been expended in the prosecution of those suits by the road, and liabilities incurred therefor. I am confident that all who expressed any opinion about them agreed that the sooner they were adjusted properly, and settled, the better it would be for the road. I have stated all that I now recollect that was contained in said memoranda or agreement, as it now occurs to me.

Q. 53. Were you the person designated in said paper to be supported for the office of Clerk of said Corporation, in case control was obtained of the road as aforesaid?

A. That is my recollection.

Q. 54. Was Moody Currier to be supported as Treasurer, and the present Board of Directors, designated as Directors, so far as at that time selected or designated in connection with said office?

A. Mr. Currier was to be elected Treasurer, if he desired it; but at that time he did n't know as he should take it, if offered, as I now remember. The persons then designated, so far as they were, have since been elected Directors of said road.

Q. 55. Have the present Board of Directors, since their election, taken any official action, touching in any way the conductor suits?

A. Nothing farther than appears in the record of the said Corporation.

Q. 56. Have you present the records of the Directors of said Corporation? and will you have the kindness to read the vote passed at a Director's meeting, May 31, 1870.

A. I have said records here, and I will read the vote referred to, which is as follows:

"Voted, That any and all authority conferred or attempted to be conferred on Hon. Asa Fowler to act as Trustee for this Corporation in the management and control of the suit in favor of this Corporation against George Clough, by an agreement and assignment to said Fowler, dated May 19, 1870, is hereby repudiated, revoked and annulled; and that the Clerk is instructed to notify said Fowler of this vote."

(Adjourned at 5:45 P. M. to 7 P. M.)

On cross-examination deponent says as follows, in answer to the following interrogatories, proposed by William M. Chase, Esq., of counsel for defendants.

Q. 57. Did you have any talk or negotiations with any officer of the National Savings Bank, to obtain the \$12,000 loan, on the note of John L. Tallant, signed by yourself, as you have stated in this deposition?

A. As I have before stated, my impression was that John L. Tallant made the application for the loan; but upon consultation with Mr. Tallant, since the commencement of this deposition, I feel confident that he made the loan, and that I

had no talk with any of the officers of the Savings Bank in reference thereto, unless Mr. Tallant is a trustee of said bank.

Q. 58. Did you solicit the loan of twenty-five thousand five hundred dollars upon the note signed by Frederick Smyth and others, or take any part whatever in negotiating for said loan, or have any talk with any officer of the bank for that purpose?

A. I did not.

Q. 59. Did you act as an officer of the said bank in any capacity in deciding whether either of the loans mentioned by you in this deposition should be made?

A. I did not, and more than that, although I am on the investing committee of said bank, I have no recollection now of ever taking any part in making any loan, or deciding upon any loan or application therefor.

Q. 60. Did you ever have any agreement or understanding of any kind, with any officer of the National Savings Bank, whereby you were to have funds from that bank, for the purpose of buying Concord Railroad stock?

A. I never did.

Q. 61. Were the loans that you have mentioned all made in the ordinary course of business, so far as you know, and as you understood it?

A. All the loans which I took any part in making were made in the ordinary manner, and in the same way that I have been accustomed to obtain loans from banks; and were made in the ordinary course of business, as I then understood.

Q. 62. Was there ever any agreement or understanding of any kind, between you and any other person, whereby you were to use your official position in said bank for obtaining money to purchase Concord Railroad stock?

A. There never was.

Q. 63. Did it ever occur to you that the loaning or obtaining of this money upon the loans which you have mentioned, could be regarded as a breach of trust, or official misconduct on your part, or the part of any other officer of the bank?

A. It did not.

Q. 64. In other depositions taken in this case, reference has been made to some loans that were obtained by some of the present officers of the Concord Railroad, and parties who voted for them at the last annual meeting, from banks in Manchester, other than the two one hundred thousand dollar loans that you have mentioned in your deposition. When did you first know or hear of such loans?

A. I think I never had any knowledge of any kind of the forty-two thousand five hundred dollar loan, made by Moody Currier from the Merrimack River Savings Bank, and the forty-

two thousand five hundred dollar loan made by Frederick Smyth from the Amoskeag Savings Bank, and the loans made by Mr. Johnson from the Merrimack River Savings Bank and the First National Bank, amounting to about forty-two thousand dollars; and the loans made by Edson Hill from the Amoskeag Savings Bank and the National Bank (Amoskeag), nor any other loans made in Manchester, if any, prior to the investigation had last June before committees of the Legislature, except one: namely, that made by John H. Pearson, at the Amoskeag National Bank or Savings Bank. I was present at one time, and heard Mr. Currier tell Mr. Pearson he could have the amount of money he desired, which I think was some ten or fifteen thousand dollars.

Q. 65. Was there ever any combination, agreement or arrangement of any kind, made between the persons who were elected officers of the Concord Railroad Corporation, at the last annual meeting, or the persons who voted for them, or any of them, for the purpose of obtaining money, in any way, from any banks to buy Concord Railroad stock, excepting the applications for loans mentioned in this deposition, which you say were obtained in the ordinary course of business?

(Objected to, the witness being only able to state so far as his own personal knowledge or connection therewith is concerned.)

A. I never had any such arrangement or agreement of any kind, with the persons referred to in the question, to obtain money, as therein stated, for the purpose of purchasing Concord Railroad stock, nor had any knowledge of such combination, arrangement or agreement. But, on the contrary, my understanding was that each man who was purchasing stock, in concert with others, or without, was to buy his own stock and pay for it, and obtain his money from such sources as he pleased.

Q. 66. You have stated, in this deposition, that one object you had in purchasing Concord Railroad stock, was to obtain control of the road. Why did you want to obtain such control?

A. I desired to obtain control of the road, and take part in the management of its affairs, for the purpose of reducing the local fares and freights, which I believed were, with reference to the through fares and freights, higher than they ought to be; and that, under proper management of the Concord Road, the same could be reduced. Another object which I had was, so far as I might be able, to prevent the consolidation of the Concord Road with the other roads connected therewith, and forming a part of the through line, so called, from Boston to Ogdensburg, as I believed that the leading managers of said line intended, if they could, to effect such consolidation; and that such a consolidation would be extremely detrimental to the stockholders of the Concord Railroad, and to the people of New-Hampshire.

Another reason was, because I desired to be clerk of said road. There were some other considerations that influenced me in my action, and among them was this: That I disliked, personally, some of the officers of the road, and as I believed better men could be put in their places. Another reason occurs to me, which I have omitted to state: viz., That the parties, having the exclusive right to carry express matter over the road, did not pay for that privilege fifty per cent of its value to the road; that they were allowed this great opportunity to make large amounts of money, to the prejudice of the road, the stockholders thereof, and the public. There may have been other influences operating upon me, which do not now occur to me.

Q. 67. Was it your purpose, or the purpose of any of those who acted with you, to your knowledge, to increase the fares and freights upon the business of the Concord Railroad and the roads operated by it, in case you obtained the control of the road?

A. It was not my purpose to do that, and I am confident it was not the purpose of any one of the present Board of Directors to do it; but, on the contrary, I think I heard each one of them, before the annual meeting, in conversation with them, as to the management of the Concord Road, say that it was their purpose, if they should have any authority, to reduce them; and from such knowledge as they had, they believed it could be done, and pay the stockholders ten per cent annual dividends.

Q. 68. Was there any agreement or understanding between yourself and those who acted with you, about the conductor suits, or any of them, in any way differing from that contained in the memorandum of agreement, made on or about March 29, of which you have stated the contents?

A. I had the understanding, from my knowledge of the suits, except that with Mr. Clough, that it would be better for the road, and just toward the defendants to dismiss them; but I know of no such understanding or agreement between the other parties. I think I so said to some, if not all the present Board of Directors of the Concord Railroad; but I have no recollection that they entertained and expressed the same opinion with reference to them as I did. I think I may have said, with reference to Mr. Clough's suit, that I should be willing, and believed it would be just, both to the road and himself, to then discharge his suit, upon the payment of five thousand dollars, the amount which the referees awarded he should pay with no contingencies, and that the other portion of the award which was made upon certain conditions, should be remitted; but I knew of no understanding or agreement by which that should be done; the most of the talk that I heard with reference thereto, was on the evening when the proposition

of Governor Stearns was submitted, contained in Paper No. 5, heretofore referred to in this deposition. I had no other understanding in relation to them than, I have before stated in this deposition, as I now recollect.

Q. 69. Was there any agreement or understanding between you and those who acted with you, that if you should obtain control of the road, extra dividends should be paid on the stock of the road, until they should average ten per cent per annum from the date when the capital stock was paid into the treasury, as charged in the plaintiff's bill; or any extra dividends whatsoever? if so, state it?

A. I had no such understanding or agreement with any one, nor any such intention myself—and the only talk that I heard with reference to it, by any of the present Board of Directors, or those who acted with them in the purchase of stock, was one evening when several of them were present, the precise evening I can not state. Some one said that if the old Board of Directors were turned out they would make an effort, at the then next session of the Legislature to have the State take the road, in accordance with the provision in the charter—to the effect that the State could so do. I said if they tried we could beat them; but that if we did not, and the State took it, we should not make any loss on the stock, as Judge Upham had informed me that each stockholder was entitled to thirty dollars a share back dividends, if the State paid enough to make each annual dividend ten per cent from the time the road was chartered; other than that conversation I heard no talk about paying back dividends, or extra dividends, as I now recollect.

Q. 70. It is charged in the plaintiff bill that the present Board of Directors of the Concord Railroad intended to consolidate said railroad with other railroads between Boston, Mass. and Ogdensburg, New-York, thereby securing to each stockholder in the consolidated company two dollars' worth of stock for every dollar's worth of stock owned in the Concord Railroad. Was there any purpose or intention, on the part of yourself, or those who acted with you, to your knowledge, to do any thing of this kind?

A. There was not any such intention upon my part, nor any such purpose on the part of any member of the present Board of Directors. I have heard, I am confident, every member of the present Board of Directors are decidedly and unequivocally opposed to any such consolidation; and I know that I myself used all the influence that I had last June to resist consolidation, as it was then presented to the Legislature; and that several members of the Board, I am confident, did the same, and instructed the counsel which they had then employed to resist it.

(Adjourned from Aug. 25, at 9:20 P. M., to 8 A. M., Aug. 26.)

Q. 71. Did you ever hear any thing said, among those who acted with you in the purchase of Concord Railroad stock, about increasing the capital stock of the road, in case you got control of it; and was there any intention or purpose to increase such capital stock on your part, or on the part of those who acted with you, so far as you know? If so, state it.

A. I am confident I never heard a suggestion on the part of any one of the present Board of Directors, prior to the annual meeting or since, or intimation of any such intention to increase the capital stock of the Concord Railroad. I know that I had no such intention, or any expectation that the capital stock of the Concord Road would be increased. My understanding is now, and was then, that the Corporation has no authority in its charter to increase its capital stock, and that the same could only be done by a further grant of authority from the Legislature to that effect. I knew of no such intention on the part of any one who acted with me, or who voted for the present Board of Directors.

Q. 72. Did you consider the stock purchased by you as good property at the prices paid for it? If so, give your reasons therefor?

A. I did consider it good property at the price I paid for it, because I believed, with proper management of the road, it would pay me six per cent annually, free from tax and insurance; and because property of the road, such as forms a part of its corporate capital, and such as has been purchased and owned by said road outside of its corporate capital, is fully equal in value to the sum which the road would cost if the stock was purchased at the price I paid. I am confident for myself that when my property earns me six per cent free from tax and insurance, &c., it is a good investment, and I know that I should have been pecuniarily better off if what I have heretofore earned had been invested in property that would have annually paid me six per cent, or loaned on reliable real estate security at that rate, and allowed to remain.

Q. 73. Did the enterprise with which you were connected contemplate the use of any unlawful means, of any kind, to effect the accomplishment of your object?

(Objected to.)

A. It did not, so far as I was concerned, and I know of no such intention on the part of those who acted with me.

Q. 74. Had you any knowledge, at the time of the last annual election, that any votes were cast or to be cast for the present Board of Directors, by any persons as owners of stock who were not the actual *bona fide* owners of the stock upon which they voted?

(Objected to.)

A. I had not any such knowledge. If I had known of any such intention I should have advised them not to vote upon stock they were not *bona fide* holders of.

(Answer objected to by plaintiff.)

Q. 75. Previous to the time that you heard from Mr. Johnson that something had passed between him and Governor Stearns upon the subject, did you know that any one of those who acted with you contemplated selling the stock that he had purchased to any other parties?

A. I did not. I had no such idea myself, and I am very confident I did not hear any suggestion from any one of those who acted in concert with me, that they could or would sell their stock—at any price—or had any intention of trying to sell it.

Q. 76. State when you first learned that any thing had been said between Mr. Johnson and Governor Stearns about the sale of the stock that you and others had purchased, to Governor Stearns or the Northern Railroad? how you learned it? and state all that you know about that transaction, from beginning to end?

(Objected to as hearsay, and otherwise incompetent.)

A. As I now recollect it, it was about the middle of March, 1870, when I was at Manchester, in company with several gentlemen who acted in concert with me. Mr. Johnson came into the room and said he had had an offer to purchase all the stock that each one of us owned, at eighty-five dollars per share, as I recollect it, and one hundred thousand dollars in addition thereto as bonus. He said that the party, without telling who it was, would take our stock at that price, but that he, the party, attached some conditions to the proposition. I asked him who it was; he declined to tell, but said it was a very particular friend of his. I said to him I should make no talk about selling my stock, unless I knew the party; that the others could do as they pleased. After some talk he told who the party was, and said it was Governor Stearns. I think I asked him whether Governor Stearns wanted to buy it on his own account, or on account of the Northern Railroad, and he said he supposed on account of the Northern Road, and that Mr. Stearns desired it with a view to make a business contract between the Concord and Northern Road. I am not certain whether at this meeting or interview, or the one next succeeding, when the matter was talked up. Mr. Johnson said he wanted the parties owning the stock to hold it, and vote for such a Board of Directors as he should designate, and for the approval of such a contract as he, Mr. Stearns, should desire to make. I said to him, and several of those who acted with me made the same suggestions to Mr. Johnson, that he should get Mr. Stearns' proposition, with its details in writing, and then we should be able to act understand-

ingly. I advised him that he keep a memoranda of his interviews in order that he might know what was said and done with Governor Stearns; he said there was no need of that, as Governor Stearns was a particular friend of his, and was very anxious to make the purchase, and obtain control of the Concord Road, and he, Mr. Johnson, was desirous of assisting him, so far as he could. Mr. Johnson was told to get Governor Stearns' proposition in writing, and I think it was suggested that William R. Spalding go with him, and have some talk. There was considerable other talk in that connection, but I think I have stated the substance of it.

At the next interview, which was soon after, somewhere about the 25th or 26th of March, Mr. Johnson presented Paper No. 5, heretofore referred to in this deposition, a copy of which is annexed to Governor Stearns' deposition, as containing the details of Governor Stearns' proposition; said that he met Governor Stearns at either the office of the Northern Railroad, or Old Colony Road, in Boston; he also saw Mr. Crocker and Mr. Minot of the Northern Railroad, and that after consultation Mr. Tappan was to draw up the proposition; that he left the office and returned again, and Mr. Tappan refused to let him have the proposition, as drawn by him, because it was in his hand-writing, and I think Mr. Stearns also objected, but that Mr. Johnson might make a copy; that he made such copy, and that copy was the one that he presented to myself and others, as containing the proposition of Governor Stearns. He said that the same was approved and agreed to by a majority of the Directors of the Northern Railroad, as he understood it. He also shew me, at the same time, a paper which he said was drawn by Mr. Tappan, wherein it was stated, in substance, that the suit pending against George Clough, in favor of the Concord Railroad, should be discharged, or entered "neither party," but that was a part of Mr. Stearns' proposition. That Mr. Tappan was willing to have that come in his own hand-writing as evidence, as I understood it, of good faith on the part of Governor Stearns and himself. The proposition contained in Paper No. 5 was then read, and talk was had in relation to its provisions. I asked Mr. Johnson what kind of business contract was to be made, as he understood it, between said two roads. He said he did not know what the provisions were to be, only that Mr. Stearns was to make such an one as he desired, as stated in the proposition, and that he could n't tell the provisions which Mr. Stearns contemplated putting into the contract; but that Mr. Stearns was, as I have before said, to draw such an one as he desired, as stated in Paper No. 5. In the course of the talk about the contract, Mr. Johnson said that he understood that if Mr. Stearns had the stock he could control the road, and would expect to control the terms of the

contract. Mr. Stearns, as I understood it, could not make the Northern Road earn enough to pay such dividends as he had heretofore paid, and that he had got extraordinary expenditures make during the year, and among others he named the rebuilding of the bridge across the river at White River Junction. I told Mr. Johnson that that contract, and the movement of Governor Stearns, as it appeared to me, was for consolidation, and that if Mr. Stearns obtained the control of the Concord Road, there would be nothing that could prevent it; that Gregory Smith had got the control of the road from White River Junction to Ogdensburgh, and the lower roads were under the control of General Stark, and that the three men, Gregory Smith, Governor Stearns and General Stark, would have the next thing to, if not the absolute control of, the whole line from Boston to Ogdensburgh. Several others expressed the opinion that the purpose of obtaining the control of the Concord Road was to bring about consolidation. I remember, also, of saying, that with that line of railroads in the hands of those three men, no persons or power could resist them, and that the people of this State would be under their control. Mr. Johnson said that Governor Stearns would give us his assurance that he would oppose consolidation. I told him that assurance or promise must be in writing before I should attach much importance to it. Some one or more of the others had less faith than I had, and said they would not consent to sell. I told Mr. Johnson I would not, personally, consent to promise my influence or my vote in favor of the contract, until I knew what it was to be in detail. If I consented to sell my stock, the sale must be absolute and unconditional. Moody Currier, I remember, said he would sell his stock, but he would not sell his influence; and he may have used a stronger phrase, viz., that he would not sell himself.

In course of the conversation, Mr. Johnson said that Governor Stearns deemed it necessary to have the approval of the stockholders to such a contract as he should make. I told him, I think, that the stockholders of the Concord Road, I believed, would favor any contract proper to be made, with reference to doing the business of the Northern Road, to be made with the Concord Road, but that I should never consent, so long as I owned any of the stock, to the making or the approval of any contract that did not leave the Concord Road, and the management thereof, independent of any other corporation, so far as it might reasonably be. I was opposed to selling my stock, or having those acting with me sell theirs to Governor Stearns, because I believed Governor Stearns' purpose was, in addition to those I have stated, to take the surplus earnings of the Concord Road for the benefit of the Northern, and that he would not allow the fares and freights to be reduced, as I believed they

might be, and would allow the road to deteriorate, and that the effect of his obtaining the road would be decidedly injurious to the stockholders and the public. All agreed with me, and, as I now recollect, without an exception, that they would not accept Governor Stearns' proposition, as contained in said Paper No. 5. Some of them said they would sell their stock, if they could have the cash down, and could receive their money upon the transfer of their stock, and the bonus in addition thereto; that they were to have no conditions about the same. Mr. Johnson and Mr. Spalding had another interview, I think, with Governor Stearns. Mr. Johnson went home, and, as I now recollect it, met Mr. Stearns on the cars, as he was coming from home, at Franklin, and communicated to him the fact that those that acted with him (Mr. Johnson) would not sell their stock, and that he could not induce them to, unless Governor Stearns would take their stock and pay cash down for it, and the bonus; and that he did n't know as he could then, but would try. Mr. Stearns told him he would see if he could raise the money; that he thought he could; that he (Mr. Stearns) would go to Boston, that day, and desired Mr. Johnson to meet him there, I think, next day. Mr. Johnson and Mr. Spalding met him there, the next day, at the Northern Railroad office, and there saw, as I now recollect it, Mr. Stearns, Mr. Crocker, and Mr. Minot.

Mr. Stearns told them that he would modify this proposition he had before made, to the extent that he would buy their stock absolutely, such as chose to sell, if all, and, I think, would pay them the cash, on the delivery of the stock; but had some talk with Mr. Johnson as to making some one or more a director or directors, and he was to be at liberty to make that arrangement; and, I think it was understood, that Mr. Smith and Mr. Johnson were to go into Mr. Stearns' Board, such as he should make up, for Directors of the Concord Road, if they desired. If they consented to go in, they were to hold and carry their stock. Mr. Johnson and Mr. Spalding came from Governor Stearns, and stated, to me and others, on the night of the 29th of March, I think, the result of interviews with Governor Stearns, and his modified proposition. The whole subject-matter was talked up; and much of the same kind of talk, as to the effect of selling the stock to Mr. Stearns, and the results which would be likely to follow, as to consolidation, the interests of the stockholders, and the welfare of the public, as I have heretofore stated. It was decided, by all, finally, that they would not accept Governor Stearns' modified proposition, and sell their stock, even if they could have the cash on the delivery, and the additional bonus. After that decision was reached, the memoranda of agreement, which I have heretofore referred to, was then drawn up, and signed, as I now recollect. I have stated the substance of the talk had by Mr. Johnson, with myself and others, as to the

proposition of Governor Stearns, with reference to the sale of stock, owned by myself, and those who acted with me, as it now occurs to me. The further reason why I desired the promise, which I have heretofore named, or assurance, which Governor Stearns made, or was to make to Mr. Johnson, -- viz., that he would oppose consolidation, -- should be in writing, was, because there would then be a record, which I should have, if any question should arise in reference to the same, afterward.

(Answer objected to as being but a budget of hearsay testimony, from the beginning to the end of it, and as otherwise incompetent.)

Defendants say it is competent as bearing upon the question of motives and intentions.

Q. 77. From whom, and when, in reference to the meeting on the 29th of March, did you learn what had passed between Governor Stearns and Mr. Johnson, or Mr. Johnson and Mr. Spalding, and was this information before you, and those who acted with you, when this memoranda of March 29th was written about which you have testified?

A. I learned it from Mr. Johnson and Mr. Spalding, as I have before stated, and that information was before me, and I understand was before the others, at the time the memorandum was signed, which I think was on said 29th of March.

Q. 78. Was any authority, direct or indirect, conferred upon Mr. Johnson by you, or those who acted with you, so far as you know, to negotiate for the sale of any stock that had been purchased by you and them, previous to the time when Mr. Johnson communicated to you the proposition he had received from Governor Stearns, as he said.

A. There was not any such authority, directly or indirectly, conferred by me to negotiate for the sale of my stock, before he stated that a party would buy my stock, as I have heretofore said; nor had I intimated before that an intention to sell, nor expected to sell. I did not confer any authority upon him afterward to make sale of my stock; but on the contrary said to him not to make any proposition from me to sell it upon any terms. I am confident that no one of those who acted with me, ever said, in my hearing, that they would sell their stock or expected to sell it, or any thing about selling it, prior to the time when Mr. Johnson said that a party wanted to buy it. I think I heard each one of them say to Mr. Johnson not to make any proposition to Governor Stearns for the sale of their stock, after he gave the names of the party who wanted to buy.

Q. 79. Will you annex to this deposition a copy of the By-Laws of the Concord Railroad Corporation, and a certified copy of the proceedings of the annual meeting of the Corporation, holden on the 24th day of May, 1870, and of the pro-

ceedings of the Directors then elected, at their meeting for organization?

A. Yes, I will; they are hereunto annexed, marked "A," "B," "C."

Q. 80. Will you also annex to this Deposition a certified copy of a vote passed at a Directors' meeting, of said Corporation, holden on the 27th day of May, 1870, relating to the revocation of any authority that Hon. Onslow Stearns then had, as agent of said Corporation?

A. I will, and it is hereunto annexed and marked "D."

Q. 81. Did you, and the other persons, upon whom authority was conferred for that purpose, give the notices and make the demands contemplated in the votes passed at Directors' meetings holden on the 24th day of May, 1870, and the 27th day of May, 1870—copies of which have been annexed? if so, will you annex copies of such notices and demands, with certificates upon the same, showing the time when such notices and demands were given?

A. I did make such service, in company with the persons designated, by giving in hand to Governor Stearns copies of said votes, as I now recollect, and I made return of such service upon copies retained by me which are now in the hands of the Court. I will annex copies if I can, and they are annexed, marked "E," and "F."

Q. 82. From the records of Directors' meetings of the Corporation, when does it appear that the vote to call the last annual meeting was passed, and at what meeting of such Directors is the first allusion to the Contract of April 29, 1870, made?

A. The vote of the Directors to call the last annual meeting was at a meeting of the Directors holden April 28th, 1870. At the same meeting is the first allusion to the Contract of April 29, 1870, found in the records.

Q. 83. State whether it appears from the records of said Corporation that the contract between the Concord Railroad and the Manchester & Lawrence Railroad, dated May 27, 1860, was approved of by the stockholders of the Concord Railroad Corporation, at a meeting of such stockholders called for that purpose? if so, you may state when said meeting was holden, and give a copy of the vote on that subject passed thereat.

A. It appears from the record that a special meeting for that purpose was holden at Concord, on the 16th of January, 1861, at the Phenix Hall. At said meeting the following resolution, as of record appears, was adopted.

"Resolved, That the contract made between the Concord and Manchester & Lawrence Railroads, dated the 27th of December, 1860, be approved by the stockholders of the Concord Road."

(Direct examination resumed by Hon. John Y. Mugridge, counsel for defendant.)

Q. 84. You have stated in this deposition one reason why you purchased stock of the Concord Road was because you wanted to be Clerk of the Corporation. What did you want to be Clerk for?

A. Because I desired the advantages that might arise from holding that position, pecuniarily and otherwise.

Q. 85. Specify all the advantages that you thought might arise from the position?

A. One of them was, that I should understand, be able to learn more than I then knew with reference to the management of railroads, and their relation to the body politic; another, as I then understood it, that the position would entitle me to free rides over the Concord Road, and other roads connected therewith; in that respect I have not been disappointed; and many other advantages which might, under a certain state of facts, be of use to me.

Q. 86. Specify all of said advantages fully?

A. I think of none other, except that by reason of holding the position I might be employed to act as counsel for the road.

Q. 87. Did you expect any other position in connection with said road or its management, than that of clerk?

A. I am not quite certain as to what my expectations were, but I have no recollection now, that I expected any other position.

Q. 88. Do you understand that, under the charter and by-laws of the Concord Railroad that the clerk has any thing to do with the management of the road? is his office any thing more than that of mere scrivener, to write up the records?

A. My understanding is, though I have not examined the Charter and By-Laws with regard to the specific matter inquired of by the counsel, that the duties of the Clerk are to keep the records of the corporation, and the meetings of the directors.

Q. 89. Is the office, substantially as you understand it, merely of a scrivener or scribe, whose duty it is to write down, in a fair and legible hand, the actions of other men who are selected to manage and conduct the affairs of the corporation?

A. I have given my understanding of the duties of the clerk, in my answer to the previous question. I will insert Article 8 of the By-Laws of the Corporation, for the information of the counsel, who appears to have a laudable desire to be informed of the duties of the clerk, wherein the duties of the clerk appear to be defined. It is in the words following:

"ARTICLE 8. It shall be the duty of the Clerk of the Board of Directors to attend all their meetings, and also the meetings of the corporation; to keep a full and accurate record, in some

suitable book or books for that purpose, of all the votes and acts of the directors and of the corporation, when he shall officiate as their Clerk, for the faithful performance of which duties he shall be sworn."

In this article is to be found a full and distinct statement of the duties of the Clerk of the Concord Railroad Corporation, as I understand it.

Q. 90. Do you understand that said article points out any other duties than those of a mere scrivener or scribe?

A. I am sure the article explains itself better than I can to minds of ordinary comprehension.

Q. 91. Will you please examine the book of records of the Concord Railroad, and see if you can find a single record contained upon said book any where in your hand-writing? if so, point it out; and have you done any thing more than to sign your name to records that some one else has made up and written for you?

A. It affords me no ordinary degree of satisfaction to be able to state to the counsel, who apparently finds a very considerable degree of satisfaction in asking these questions, that the records referred to by him, which have been made in said book since I had the honor of being clerk, are made in the hand-writing of my partner, as I now recollect, under the following statement of facts, and for the reasons which I shall hereafter give: I have attended the meeting of the Board of Directors, kept a record of the votes by them, passed, and asked him to write said record in the book of the corporation kept for that purpose, and when correctly made I have signed it. The reason why I had him write them was because he wrote a very much plainer hand than myself, and therefore very much easier read.

Q. 92. Will you swear that Mr. Chase has not put each or any of those records in proper form from memoranda furnished by you?

A. I am very certain that Mr. Chase has recorded them as I have directed him, and I have furnished him with the votes as they were cast, and the record of the same was made.

Q. 93. Will you state that in one single instance you have handed to Mr. Chase, for record, the proceedings of a meeting either of directors or stockholders, in exactly the same shape as it now appears upon the books of the corporation?

A. I have not attended any meeting of the stockholders as clerk; I have no doubt that I have handed to Mr. Chase for record, as I have before stated, the votes as they were passed; but I am not absolutely certain that he may not have crossed a t, or doted an i, that I may have omitted to do; I am not certain also that I always wrote out the formal heading of the records as they now appear, but might have simply given him the date, and the place where the meeting was held — but I

have no doubt that I examined my record as I had made it up, and if I did not read to him always the record as made by me, I invariably compared them and found them correct and adopted them as my record before I signed them.

Q. If, then, your partner has put your records in form, which you have adopted, as stated in your last answer, and if he writes a much plainer hand than yourself, will you please state what particular advantage the Concord Railroad stock holders, and the public at large have gained, by putting you in clerk and turning out Samuel N. Bell?

(Objected to as misstating the witness, and impertinent.)

A. I think I have not stated, heretofore, that my partner changed the form of the records, but wrote them as I gave them to him, or read them to him, and that I signed them after an examination and found them correctly entered. So far as Mr. Bell is concerned I am sure he was a very good clerk; so far as the advantages to the stockholders are concerned, I think he was faithful in the discharge of his duties, and I know of no particular advantage which the stockholders will derive from the change; so far as the public is concerned, or have any interest in the matter, I take it they will be satisfied hereafter, and was satisfied with Mr. Bell's discharge of the duties of the office. No advantage now occurs to me which the public will derive from the change.

Q. 95. In your answer to Int. 71, you have given to the court, somewhat in detail, your views as a financier upon monetary matters. Will you please state whether you would regard an investment in railroad stock at six per cent, of money hired of a savings bank at seven and a half per cent, "as a good, sound, safe investment," and such an one as would commend itself to your approval?

(Adjourned at 1 P. M. to 2 P. M.)

A. The investment, I have no doubt, would be sound; but the loan, if allowed to remain for a long time, I should think would not be profitable, or in other words, the whole transaction would not be profitable.

Q. 96. If the duties of clerk were simply to keep the records of the company, and you never expected to hold any other position but that of clerk, as you testified in answer to Int. 85, how did you expect you were to have any thing to do with reducing fares or tariffs on the road, or with express contracts, &c.?

A. I think I have not stated that I expected to have any thing to do with reducing fares and freights [but that the gentlemen with whom I acted in concert, I did not expect would disregard the wishes of the stockholders, and would allow each one to have his legitimate influence].

(Part of answer inclosed in brackets, objected to by plaintiff counsel as not responsive to question.)

Q. 97. Did you not testify, substantially, in answer to Int. 65, that one of your motives in purchasing stock was to enable you to obtain the control of the Concord Railroad, to enable you to take part in its management, to reduce fares, to correct abuses in respect to express contracts, prevent consolidation, &c.?

A. I testified substantially that.

Q. 98. Did you understand that the discharge of your duties as Clerk allowed you to interfere in matters of that kind?

A. It don't occur to me now what my understanding then was as to the matter inquired of in this question.

Q. 99. Did you not think at the time you were purchasing stock and were expecting to be elected Clerk, that the discharge of your duties as Clerk would do much toward advancing the interests of the stockholders, and do much toward relieving the public from grievous and intolerable abuses which were being practiced upon them by the old Board?

(Objected to as irrelevant, incompetent and impertinent.)

A. I entertained the idea, perhaps erroneously, in the discharge of my duties as Clerk, that I might have some influence which would be favorable to the stockholders, and I hoped to the public; and that the Board of Directors, with whom I was to be associated, would correct such abuses as they might discover in the former management, if any. I think that such were substantially the views which I entertained. [I think it did not then occur to me that in connection with the discharge of my duties I should be called upon to make a deposition, and that if I was, no lawyer whom I was in the habit of meeting at the bar, would avail himself of that opportunity, when I was on the witness stand, to be uncivil or impolite, especially when he had me at such disadvantage.]

(Parts of answer in brackets objected to by plaintiff's counsel as not responsive to the question.)

Q. 100. Were not your motives in purchasing stock as aforesaid largely those of benevolence toward the stockholders and the public?

A. I think I have stated my motives substantially as they now occur to me, and have, during the progress of making this deposition, when I have been inquired of as to the same.

Q. 101. Have you had any experience in managing the affairs of railroads heretofore? if so, where did you get it? please state fully?

A. I never have had any experience in the management of railroads that now occurs to me; such knowledge as I have in relation to the same has been acquired by observation, and

such investigation as I have been able to make in relation to their management.

Q. 102. With the exception of Isaac Spalding, do you know of a man among the present Board of Directors of the Concord Railroad that has ever had the slightest experience in the management of railroads? if so, who is he? and is Isaac Spalding a man in rather feeble and infirm health, and over seventy years of age?

A. With reference to the present Board of Directors experience in the management of Railroads, to what extent, and how much experience they have had, I am quite unable to state. I have no knowledge as to the age of Mr. Isaac Spalding, and can only judge from his appearance; I should think he might be seventy years of age, however, and that his health is not good; but I have knowledge as to that.

Q. 103. So far as you do know, have either of said Board, with the exception above named, had any connection with the management of any railroad?

A. I don't know that they have with its immediate management.

Q. 104. Do you know one that has been remotely connected with the management of any railroad, or connected any way therewith?

A. I do not; no one occurs to me.

Q. 105. Did you ever hear it talked among your associates, or any of them, that in case they succeeded in obtaining control of the Concord Railroad, the Superintendent, Mr. James R. Kendrick, was to be removed, and his place filled with Gen. Natt Head, of Hooksett?

A. I think not.

Q. 106. Will you swear you never heard talk of that kind?

A. I feel very confident that I never heard Mr. Head's name mentioned in connection with the office of Superintendent of the railroad.

Q. 107. Will you state that there was no talk among the persons aforesaid, or understanding, that in case of their success in obtaining control of the railroad, that Mr. Kendrick was to be removed from the office of Superintendent?

A. I will state that I have heard the subject matter of his removal discussed, as I now recollect it, and that there were differences of opinion when I first heard it talked about, as to the same.

Q. 108. You have stated as to the matter when it was first talked about; will you state how it was when it was last talked about?

(Objected to as irrelevant, and an improper inquiry into matters with which these plaintiffs have no concern.)

A. I am not able to state when I last heard it talked about, and therefore can not state what was then said.

Q. 109. Have you made the best answer you can make to the previous question?

A. I think I have—the best and most proper answer that I could make.

Q. 110. Do you mean to state that you have no knowledge whether or not it was arranged and understood that Mr. Kendrick was to be removed in case of the success of yourself and associates?

A. I mean to say that, substantially, I heard the matter talked about by some members of the present Board of Directors, and that I have no knowledge of their intention, further than such as I have acquired from their talk—simply that and nothing more.

Q. 111. What knowledge have you acquired from their talk on that subject?

(Objected to, for reasons stated in Int. 105.)

A. Well, sir, I have heard some of them say that he was a very clever fellow, and very much of a gentleman, and I indorsed the same with a hearty good will, and that they would have been in favor of retaining him as superintendent, if it had not been for the course which they understood he had taken with reference to the Contract of April 29, 1870. I have heard others say, I think, and perhaps all of them, that there was no occasion for his interfering, or favoring Governor Stearns, in relation thereto, and that if they went for his removal, in case they were elected directors, it would be for that reason. I think that I have obtained the impression from their talk, that they would generally favor his removal.

Q. 112. Who are the persons whom you say you personally disliked in the old board of management, as referred to in a former answer?

A. I am not inclined to state my likes or dislikes in this deposition, except in general terms.

Q. 113. Do you refuse to state the names of the individual whom you refer to in your answer to Int. 65, concerning whom you say this: "there were some other considerations that influenced me in my action, and among them was this, that I disliked personally, some of the officers of the road, and as I believed, better men could be put in their places"?

A. I am not inclined, as at present advised, to designate more specifically than I have my likes or dislikes.

Q. 114. Why did you introduce a reason for your action, like the one above referred to, if you were unwilling to state fully and frankly with regard to the same, in reply to a proper question?

A. I was asked to state in that question, as I now recollect it, some of the reasons, and the one above stated, occurred to me and I gave it; I think, perhaps, that it would have been quite as well not to have named it.

Q. 115. Do you refuse to give the names of the officers of the road, whom you personally disliked, as before referred to?

A. I am not inclined to do so at present.

ANSON S. MARSHALL.

COPY OF AGREEMENT

furnished by Hon. Asa Fowler to Mr. Marshall—said to be the one referred to in the vote copied into the Ans. to Int. 55—annexed hereto at the request of the plaintiff's counsel—objected to by the defendant's counsel as incompetent evidence.

§ U. S. 5 ct. § This agreement, made this 19th day of May,
 § Rev. Stamp § 1870, by and between the Concord Railroad
 § cancelled. § Corporation, as the first party, and the Manches-
 § U. S. 5 ct. § ter & Lawrence Railroad, as the second party,
 witnesseth:

That for the purpose of determining the rights and interests of each of said parties respectively, in the suit now pending in the S. J. Court for Merrimack County, N. H., in the name of said first party, against George Clough, of Concord, in said county, and in the causes of action on which said suit is founded and of securing said rights and interests to each accordingly, it is hereby mutually agreed by and between said parties as follows:

Said suit shall be prosecuted to final judgment, and said judgment shall be enforced and collected in due course of law; and neither of said parties shall do, or permit to be done, any act or thing to prevent, hinder or delay said prosecution and collection as aforesaid.

From the proceeds, when collected, shall be paid all costs and expenses of said prosecution and collection, as aforesaid, which have not already been paid, and the balance shall be divided and paid over to said parties in the proportion of three fifths to said first party and two fifths to said second party.

And for this purpose it is agreed that said first party shall transfer, assign and convey said suit and all causes of action on which the same is founded, to Hon. Asa Fowler, of Concord, N. H., with full power and authority, in the name of said first party, to prosecute said suit to final judgment, and to enforce and collect said judgment, and on payment of the same, to execute all proper receipts and discharges therefor, and to do all other acts necessary and proper in the premises, in trust; to apply so

much of the proceeds as may be necessary to pay the costs and expenses aforesaid, and to divide and pay over the balance to said parties as herein before provided.

And the said first party accordingly, and in consideration of one dollar paid to it by said Asa Fowler, does hereby transfer, assign and convey, as aforesaid, said suit and the causes of action on which the same is founded, to said Asa Fowler, in trust as aforesaid.

And the said Asa Fowler does hereby accept said trust, and agree to discharge the same accordingly.

In witness whereof said parties and said Asa Fowler have hereunto set their hands and seals the day and year above written.

CONCORD RAILROAD CORPORATION. [L. S.]

By J. MINOT, *Pres't.*

N. PARKER, *Treas'r.*

THE MANCHESTER & LAWRENCE RAILROAD [L. S.]

By ASA FOWLER, *Pres't,*

E. A. STRAW.

ASA FOWLER. [L. S.]

EXHIBIT A.

BY-LAWS OF THE CONCORD RAILROAD CORPORATION, ADOPTED
JULY 7th, 1841.

Meetings of the Corporation.

ARTICLE I. The annual meeting of the Corporation shall be holden on the last Tuesday of May. All meetings of the stockholders shall be notified by advertisement, published in one or more of the principal newspapers printed in each of the towns of Concord and Nashua, and in the city of Boston, at least ten days before the time of meeting, signed by the President, Clerk or Treasurer of the Corporation. In case of omission to notify the annual meeting as aforesaid, the same shall not be lost, but shall be adjourned for the transaction of business, until the required notice thereof shall be given. At the annual meeting, it shall be in order to act on any subject within the powers of the Corporation. At special meetings, the subjects to be acted on must be specified in the notice for such meeting. Special meetings shall be called whenever the Directors shall order, or whenever application, in writing, shall be made therefor, signed by stockholders owning one thousand shares. Absent members may vote by agent or proxy, duly authorized in writing, which shall be filed with and preserved by the Clerk. In the absence of the President from the meetings of the Corporation, or meetings of the Directors, a chairman shall be elected to serve for the occasion.

Reports, Accounts, Dividends.

ARTICLE II. The annual Report for the Legislature, and for the annual meetings of the Corporation, shall be made up to the first day of May in each year. The semi-annual accounts and reports for dividends, shall be made up to the first day of May and the first day of November, in each year. Dividends, when made, shall be declared on the last Tuesday of May and the last Tuesday of November in each year, payable at such times as the Directors shall order.

Seal.

ARTICLE III. The Seal of the Corporation shall have engraved on its margin the words, "*Concord Railroad Corporation*," and in its center the words, "*Incorporated June 27, 1835*," and be kept by the Treasurer.

Directors.

ARTICLE IV. At all duly notified meetings of the Board of Directors, a majority: viz., four, shall constitute a quorum for the transaction of business, and a majority of all present shall be necessary to give validity to any vote. They shall make report of their acts and doings, receipts and expenditures, to the Legislature, and of the condition and prospects of the concern to the Corporation, and make up and cause dividends to be declared, as is provided in Article II. In case the office of any Director shall become vacant, by death, resignation, or otherwise, the remaining Directors may fill the vacancy, by electing some other person to supply his place. They shall prescribe for the Treasurer the form of certificates of stock, the manner of transferring shares, the books and accounts to be kept, and the reports and exhibits to be made by him, and all such other duties as they may think necessary or useful.

Conveyance of Real Estate.

ARTICLE V. All instruments purporting to convey the Real Estate of the Corporation, or having relation thereto, which shall be signed by the Directors, or by a committee of the Board, appointed by them for that purpose, and countersigned by the Treasurer, and under the Seal of the Corporation, shall be valid and effectual as the deed of the Corporation.

Installments and Sale of Shares.

ARTICLE VI. The publication of installments, and sales of shares for the non-payment thereof, shall be such as the Directors shall order. In case of sale, the Treasurer shall also notify the delinquent owner, when his residence is known, of the time and place of sale, by letter, seasonably put into the mail; his certificate that notice has been duly given shall be full evidence of the fact. When shares are sold for delinquencies, the Treasurer shall certify on the back of the certificate given to the

purchaser, that they were purchased at auction for the non-payment of installments, naming them.

Treasurer.

ARTICLE VII. The bond of the Treasurer shall be for a sum not less than thirty thousand dollars, and be in the custody of the President. It shall be the duty of the Treasurer to collect all installments—safely to keep the Seal of the Corporation, and all the moneys, securities, and valuable papers—to disburse and deliver over the same, as the Directors shall require—keep his books and accounts in an approved form, showing the true condition of the finances and funds of the Corporation—also, a book or books, showing the names of the stockholders—the number of shares owned by each, and the payments thereon, with all the transfers thereof. While the Road is constructing, he shall, on the first of every month, make a report to the President of the Corporation of the condition of the Treasury, and giving such other information as he may think useful. He shall seasonably prepare the statistics of the Reports required by the charter, or by these By-laws, for the Legislature, the Corporation, or the Board of Directors, and comply with all proper rules and regulations and directions, which may from time be prescribed by the Board of Directors, and perform all the duties appertaining to the office of the Treasurer of a Railroad Corporation. He shall also keep a book or books, in which he shall record the Reports of the Board to the Legislature and the Corporation, and all conveyances of real estate to or from them, and all such other contracts and writings as the Directors shall order, with a convenient index to the same.

Clerk of the Corporation.

ARTICLE VIII. It shall be the duty of the Clerk of the Board of Directors to attend all their meetings, and also the meetings of the Corporation; to keep a full and accurate record, in some suitable book or books for that purpose, of all the votes and acts of the Directors, and of the Corporation, when he shall officiate as their Clerk, for the faithful performance of which duties he shall be sworn.

ARTICLE 9. These By-laws shall not be altered or amended, except by a major vote of two thirds of the stock represented at some meeting of the Corporation proper for the purpose.

A true copy of the By-laws of the Concord Railroad Corporation.

Attest—C. H. PEASLEE, *Clerk.*

AMENDMENT OF BY-LAWS.

At a meeting of the Concord Railroad Corporation, holden May 30, 1843, it was

“Voted unanimously that the By-laws be so far altered as to have the meeting of the stockholders holden on the Tuesday preceding the last Wednesday of May.”

EXHIBIT B.

MEETING OF THE CORPORATION, }
May 24, 1870. }

At a meeting of the stockholders of the Concord Railroad Corporation, held in Phenix Hall, in Concord, N. H., on Tuesday, May 24, 1870, at eleven o'clock in the forenoon, pursuant to the following notice:

"CONCORD RAILROAD.

"The stockholders of the Concord Railroad Corporation are notified that their annual meeting will be held at Phenix Hall, in Concord, N. H., on Tuesday, May 24, 1870, at eleven o'clock in the forenoon:

"1st. To act on the report of the Board of Directors.

"2. To choose a Board of Directors for the ensuing year.

"3. To transact any other business that may be brought before the meeting.

"S. N. BELL, Clerk.

"CONCORD, N. H., May 6, 1870."

Which notice was published in the *Nashua Gazette*, a newspaper printed at Nashua, N. H.; in the *New-Hampshire Patriot and State Gazette*, in the *Republican Statesman*, both newspapers printed at Concord, N. H.; in the *Daily Mirror*, and *Daily Union*, both newspapers printed at Manchester, N. H.; and in the *Boston Daily Advertiser*, and *Boston Daily Journal*, both newspapers printed at Boston, Mass.,—each more than ten days before said twenty-fourth day of May, 1870.

The President presented the twenty-ninth annual report of the Board of Directors.

On motion of Gen. Israel Hunt, of Nashua, it was voted, that the reading of the report be dispensed with.

On motion of Gen. Benjamin F. Butler, it was voted, that the further consideration of the report be postponed, for the purpose of proceeding with the election of Directors.

On motion of Gen. Benjamin F. Butler, it was voted, that the Corporation proceed to the election of Directors, and that a Committee of Six be appointed, by the President, to receive, sort, and count the votes for Directors.

Whereupon, Hon. Asa Fowler, of Concord, N. H.; Hon. Ira A. Eastman, of Concord, N. H.; Hon. Edmund Burke, of Newport, N. H.; Clinton W. Stanley, Esq., of Manchester, N. H.; William H. Hackett, Esq., of Portsmouth, N. H.; Edward H. Spalding, Esq., of Nashua, N. H.,—were appointed such committee.

On motion of Col. John H. George, it was voted that the treasurer be authorized to affix Revenue Stamps to all proxies not properly stamped.

The Committee appointed to receive, sort and count the

votes for directors, reported that the whole number of votes cast was	25,860	
Number necessary for a choice was	12,931	
Josiah Minot had	10,236	votes.
Francis M. Weld had	9,960	"
Thomas Chase had	9,520	"
Nathan Parker had	10,135	"
Phineas Adams had	9,556	"
Joseph Stephens Abbot had	9,960	"
Richard H. Messer had	9,924	"
Isaac Spalding had	16,340	"
Frederick Smyth had	15,689	"
John H. Pearson had	15,926	"
James W. Johnson had	15,926	"
Edson Hill had	15,689	"
William R. Spalding had	15,900	"
William H. Tower had	15,825	"

Whereupon Isaae Spalding, Frederick Smyth, John H. Pearson, James W. Johnson, Edson Hill, William R. Spalding and William A. Tower, each having a majority of all the ballots cast, were declared duly elected directors of the Concord Railroad Corporation for the ensuing year.

On motion of Hon. David Cross, the following resolutions were adopted:

WHEREAS, the President and Directors of the Concord Railroad Corporation, for the past year, have violated their official trust and have unlawfully used their power, as agents of said corporation, in an unauthorized undertaking to deprive the stockholders of the possession and earnings of their railroad, and the property thereunto belonging by a proceeding unparalleled in the history of railroads, and in violation of the obligations which this corporation owes the public:

Therefore, be it resolved, that we condemn the official action of said President and Directors in reference to their recent so called business Contract with the Northern Railroad, and we hereby set aside their action in reference to said Contract as wholly unauthorized, illegal, and in violation of our rights and the rights of the public, and we therefore pronounce the same null and void.

Resolved, that the Board of Directors this day chosen be, and they hereby are, instructed to adopt such measures as in their judgment may be deemed expedient to assert and maintain the rights of the stockholders to the road and other property of this Corporation.

On motion of Hon. David Cross, the following resolution was adopted:

Resolved, That the Directors of this road are hereby requested to make, in their annual reports hereafter, a full statement

all funds reserved for special purposes, of the amount and the places where such funds are deposited.

On motion of Gen. Benjamin F. Butler, it was voted that the thanks of this meeting be tendered to the President for the impartial manner in which he has conducted the business of this meeting.

(Voted to adjourn without day.)

S. N. BELL, *Clerk.*

EXHIBIT C.

DIRECTORS' MEETING, }
May 24th, 1870. }

At a meeting of the Board of Directors of the Concord Railroad, held at the Eagle Hotel, in Concord, N. H., on Tuesday, the 24th day of May, 1870, at seven o'clock in the afternoon—

Present Messrs. Isaac Spalding, Frederick Smyth, John H. Pearson, James W. Johnson, Edson Hill, William R. Spalding and William A. Tower.

On motion, Hon. Frederick Smyth was appointed chairman *pro tem.*

The Directors then proceeded to the choice of a Clerk by ballot. The whole number of ballots was seven, and Anson S. Marshall having seven votes was declared duly elected Clerk of the Board of Directors, and also to be Clerk of the Corporation according to the charter, who, being present, took the oath of office as Clerk aforesaid, as prescribed by law, before S. N. Bell, Justice of the Peace throughout the State.

S. N. BELL, *Clerk.*

STATE OF NEW-HAMPSHIRE.

MERRIMACK SS.

May 24th, 1870.

Personally appearing Anson S. Marshall made oath that he would faithfully and impartially discharge and perform all the duties incumbent on him as Clerk of the Board of Directors of the Concord Railroad Corporation, when he should officiate as such, according to the best of his ability, agreeably to the rules and regulations of the Constitution and laws of the State of New-Hampshire and the charter and by-laws of said Corporation.

Before me :

S. N. BELL,

Justice of the Peace throughout the State.

(Continuance of the foregoing Directors' Meeting.)

The Directors then proceeded to the choice of a President by ballot.

The whole number of votes cast was six, and Isaac Spalding having all the votes cast was declared duly elected President of the Board of Directors, and also to be President of the Corporation according to the charter.

The Directors then proceeded to the choice of a Treasurer by ballot.

The whole number of votes cast was seven, and Moody Currier having all the votes cast, was declared duly elected Treasurer.

Voted, That the Clerk, John H. Pearson, and James W. Johnson be a committee to demand, in behalf of this Corporation, the possession of its Railroad from Concord to Nashua, the Suncook Valley Railroad, the Manchester & Lawrence Railroad, the Concord and Portsmouth Railroad, the Manchester & North Weare Railroad, and the Hooksett Branch Railroad, from Suncook to Hooksett; also, of all the lands belonging to said Railroads, with the privileges and appurtenances thereto belonging, and of all the depots, shops, and other buildings, and of all the fixtures now on said Railroads and there in use, all the furniture, machinery and fixtures of every kind now in use in said depots, shops and other buildings, and all the engines, cars, tools, shop-stock, and all materials of every kind belonging to said Railway, and any money and all the property of every description belonging to any of said Railroads, which is in the possession or control of said Stearns, and any other property of any name or description, and however connected, belonging to the Concord Railroad Corporation, and now in the hands of said Stearns.

* * * * *

ANSON S. MARSHALL, *Clerk*.

A true copy of record—Attest:

ANSON S. MARSHALL, *Clerk*.

EXHIBIT D.

Vote passed at Directors' Meeting, holden May 27, 1870.

“Voted, That Onslow Stearns be, and he hereby is, discharged as the Agent of this corporation, for any purpose, or to any extent whatsoever, and all authority and power heretofore delegated to and conferred upon said Stearns as an Agent of this corporation, and particularly that, thus delegated and conferred by any vote or votes passed by the then directors of this corporation at a meeting of said directors, holden at the office of

the then President, in Concord, N. H., on Wednesday the 11th day of May, 1870, at 11 o'clock in the forenoon, are hereby withdrawn, canceled and revoked; and the Clerk and John H. Pearson are hereby authorized and directed to notify the said Stearns of the foregoing, and to demand and receive of him, for and in behalf of this corporation, the fifteen thousand dollars, or any portion thereof now remaining in his hands unexpended, appropriated by said directors at the meeting last named, for constructing and providing depots and station buildings, with fixtures and furniture at Suncook, Candia, Newmarket Junction and Stratham, and for repairs on the bridges and masonry of the Hooksett branch, and also, the six thousand dollars, or any portion thereof, then appropriated from the earnings of the Manchester & North Weare Railroad, in the hands of this corporation, for repairs and improvements on that road; and also the three hundred and fifty shares of the stock of the Suncook Valley Railroad that have been transferred to him since said meeting, by virtue of a vote then passed, or so many of them as now remain in his hands undisposed of, and the proceeds of such as he has disposed of since they were transferred to him as aforesaid."

A true copy of record—Attest:

ANSON S. MARSHALL, *Clerk.*

SUPREME JUDICIAL COURT.

MERRIMACK, ss.

NORTHERN RAILROAD *vs.* CONCORD RAILROAD & A.

It is agreed that the foregoing depositions of James W. Johnson, Josiah Minot, Onslow Stearns, Moody Currier, Anson S. Marshall, John A. Spalding, William W. Storrs, and Charles Williams, taken before Luther S. Morrill, Esq., Commissioner, and the foregoing depositions of Joseph B. Clark, Isaac Spalding, Frederick Smyth and Edward H. Paine, taken before Samuel C. Eastman, Esq., commissioner, may be used upon the hearing of this case the same as if a regular caption were made.

ASA FOWLER, *for Plaintiff.*HENRY P. ROLFE, *for Defendant.*

